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Dated: January 9, 1992.

Joe D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(91) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(91) Brazos Island Harbor (42-Foot Project), Texas—Region 6.

Location: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 60–67 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to construction material dredged from the Brazos Island Harbor Entrance Channel, Texas.

[FR Doc. 92–1412 Filed 1–16–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–610–4111–02 24 1A; Circular No. 2630]

RIN 1004–AA 67

Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the Federal Register on November 23, 1990 (55 FR 48958).

EFFECTIVE DATES: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Hank Symanski.

The following typographical and editorial corrections are made in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the Federal Register on November 23, 1990 (55 FR 48958):

1. On page 48968, first column, in the Authority paragraph, the fifth line, the phrase "Act of May 31, 1930" is revised to read "Act of May 21, 1990."

1a. On page 48968, second column, second full paragraph, is revised to read: "The authorized officer may, pursuant to 43 CFR 3164.1 and 3164.2, after notice and comment, issue onshore oil and gas orders when necessary to implement and supplement the regulations contained in 43 CFR 3160, and issue notices to lessees and operators (NTL's) when necessary to implement onshore oil and gas orders and the regulations. Pursuant to Section IV of this Order, the authorized officer may approve a variance from the requirements prescribed herein to accommodate special conditions on a State or area-wide basis".

2. On page 48968, third column, line 11, is revised to read: "Upon release, could constitute a".

3. On page 48969, second column, under the definition of radius of exposure (item 1), change the exponent in the equation from "(0.625)" to "(0.6258)".

4. On page 48969, second column, under the definition of radius of exposure (item 2), delete the term "(percent)".

5. On page 48969, second column, under the definition of radius of exposure (item 3), insert the word "and" between "complex terrain" and "other dispersion".

6. On page 48969, third column, under III. Requirements, line 4, insert the word "typically" between "as" and "major".

7. On page 48970, first column, first paragraph, line 6, insert the word "the" between "stream," and "H_2S".

8. On page 48970, third column, paragraph c., line 6, is revised to read: "under section III.A.2.a.,".

9. On page 48971, first column, paragraph c., lines 3 and 4, are revised to read: "facilities or roads are principally maintained for public use".

10. On page 48971, third column, under paragraph c., change "(i)" to "1".

11. On page 48972, first column, last line, change "API–RP49" to "API RP–49".

12. On page 48972, third column, under section c. H_2S Detection and Monitoring Equipment, line 5, insert the word "of" between "air concentration" and "H_2S".

13. On page 48973, first column, paragraph iv., lines 5 and 6, are revised to read: "feet from the well site and at a location which allows vehicles to turn around at a safe".

14. On page 48973, second column, under section 4.a.i., line 10 revise to read: "water- or oil-based mud and mud shall".

15. On page 48974, first column, paragraph b.i., lines 7 and 8, are revised to read: "conditions or mud types justify to the authorized officer a lesser pH level is necessary".

16. On page 48974, first column, last paragraph, line 11, change "MR–01–75" to "MR 0175–90".

17. On page 48974, third column, first paragraph c., violation section, line 1, is revised to read: "Major, if the authorized officer determines that a health or safety".

18. On page 48975, second column, paragraph c., line 1, is revised to read: "Fencing and gate(s), as specified in section".

19. On page 48975, second column, paragraph g., in line 2 change "a" to "the" and in line 4 change "MR–01–75" to "MR 0175–90".

Dated: December 18, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92–1336 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21; Notice 11]

RIN 2127–AE13

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In mid-1990, this agency published a final rule amending certain provisions in Standard No. 114, *Theft Protection*, to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. In March 1991, in response to petitions for reconsideration, the agency published a final rule amending certain of the requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented. This notice responds to petitions for reconsideration of the March 1991 final rule submitted by Toyota and Honda. In response to those petitions, the notice further amends the requirements to provide

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 358

[Docket No. 82N-0214]

RIN 0905-AA06

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products for Over-the Counter Human Use; Final Monograph

Correction

In rule document 91-28893 beginning on page 63554 in the issue of Wednesday, December 4, 1991, make the following correction:

On page 63563, in the second column, in the diagram under paragraph (a), "Doesn't itch" should be connected by a line with "Itches a lot" all on one line. Also, in the diagram under paragraph (b), "Not at all" should be connected by a line with "Very Much" all on one line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 314, and 514

[Docket No. 91N-0074]

RIN 0905 AD45

Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use; Extension of Comment Period

Correction

In proposed rule document 91-29334, appearing on page 64216, in the issue of Monday, December 9, 1991, make the following correction:

On page 64216, in the second column, in the eighth line, "date" should read "data".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-610-00-4111-02; Circular No. 2630]

RIN 1004-AA67

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations

Correction

In rule document 90-27426 beginning on page 48958, in the issue of Friday, November 23, 1990, make the following corrections:

1. On page 48968, in the first column, in the first line of the last paragraph, "established" was misspelled.

2. On page 48969, in the second column, in the second line, the first "to" should read "be".

3. On page 48972, in the second column, in paragragh b., in the third line "respirator" should read "respiratory".

4. On page 48975, in the first column, in paragraph f., in the last line "he" should read "be".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-51]

Alan H. Olefsky, M.D., Revocation of Registration

Correction

In notice document 92-463 beginning on page 928 in the issue of Thursday, January 9, 1992, make the following correction:

On page 929, in the third column, in the last paragraph, in the last line, "1991" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Correction

In notice document 91-24532 beginning on page 51442 in the issue of Friday, October 11, 1991, make the following correction:

On page 51443, in the third column, in the file line at the end of the document, "FR Doc. 91-25532" should read "FR Doc. 91-24532".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-610-4111-02 24 1A; Circular No. 2630]

RIN 1004-AA 67

Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Correction

Correction

In rule document 92-1336, appearing on page 2039, in the issue of Friday, January 17, 1992, in the second column, in paragraph 1., in the fourth line, "May 21, 1990" should read "May 21, 1930".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6919

[CO-930-4214-10; COC-06298]

Partial Revocation of Public Land Order 1825; Colorado

Correction

In rule document 92-1771 beginning on page 2841 in the issue of Friday, January 24, 1992, make the following correction:

On page 4842, in the first column, in the second line of the land description, "Sec. 28" should read "Sec. 18".

BILLING CODE 1505-01-D

#2630

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-610-00-4111-02; Circular No. 2630]

RIN 1004-AA67

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule provides for the issuance of Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, which implements and supplements the provisions of 43 CFR 3162.1, 3162.5-1, 3162.5-2, and 3162.5-3. The purpose of this order is to protect public health and safety and those personnel essential to maintaining control of the well. This Order addresses the requirements for conducting operations in a hydrogen sulfide environment. Specifically, it identifies the necessary applications, approvals, and reports required to conduct hydrogen sulfide operations and where necessary, the components required for a Public Protection Plan. It also identifies the specific operating requirements for conducting drilling, completion, workover, and production operations in a hydrogen sulfide environment. In addition, this Order details enforcement actions and allows for variances from the specific standards. This final rule also amends 43 CFR 3164.1, Onshore Oil and Gas Orders, paragraph (b).

EFFECTIVE DATE: January 22, 1991.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, Premier Building, Room 601, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653-2133, or Chris Hanson, (414) 297-4421.

SUPPLEMENTARY INFORMATION: A proposed rule for issuing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, was published in the Federal Register on May 16, 1989 (54 FR 21075), with a 60-day comment period. An extension for submission of comments until July 31, 1989, was granted and published July 24, 1989 (54 FR 30766). Comments were received from 12 sources, including 2 industry associations, 5 industrial entities, and 5 Government entities.

Several changes and additions were made in the definitions section for clarification in response to the comments. Changes were also made in the requirements section in response to comments.

Those comments relating directly to the proposed rule have been grouped by subject matter and will be discussed as a group rather than individually.

General Comments

One commenter suggested that drilling operations be discussed separately in the Order and that completions and workovers be discussed with production operations. This Order has delineated those provisions in the drilling section which have specific applicability to completions and workovers. In addition, the minimum standards identified for all operations will remain the same regardless of organizational format. Therefore, this suggestion was not adopted.

It was recommended that a discussion of the Forest Service's (FS) role in the Public Protection Plan should be presented in this Order. The Mineral Leasing Reform Act of 1987 did not grant any specific authority in this regard to the FS. The regulations that pertain to the FS under that Act were published on March 21, 1990 (55 FR 10423). These regulations acknowledge that compliance is required with applicable Onshore Oil and Gas Orders issued by the Department of the Interior, Bureau of Land Management (BLM) as specified under 36 CFR 228.112(c)(7). The requirement for a Public Protection Plan to be included in this Order is pursuant to BLM's regulatory authority set forth in 43 CFR 3161.2. The BLM assumes the primary role and responsibility for Public Protection Plans. In the development of a Public Protection Plan, however, the operator should consider the role of the FS where the agency is the primary Federal land manager. For operations where the FS is the surface managing agency, all plans required by this Order will be forwarded to the FS along with the applicable parts of the submitted Application for Permit to Drill in accordance with existing regulations, policy and procedures.

One commenter stated that the threshold criteria throughout the Order of 100 ppm of H_2S in the gas stream and 10 ppm of H_2S in the ambient air is confusing. The following is an explanation of the provision. In addition, the wording has been changed in Sections III.A.1. and III.C.1.c. for further clarification. The 100 ppm H_2S in the gas stream is used solely as a threshold criterion to identify those wells and facilities which are subject to the requirements of this Order. The criterion of 10 ppm of H_2S in the ambient air applies to situations where protection of essential personnel and/or the public health and safety is an issue. The Drilling Operations Plan is implemented at 500 feet above the first potential H_2S zone or 3 days prior to penetrating the first identified H_2S formation (whichever comes first) for all wells subject to this Order. In addition, if 10 ppm of H_2S in the ambient air is indicated at any of the sensing points, additional measures will be taken. It should be noted that the 10 ppm of H_2S in the ambient air is not used as a factor in determining which wells and/or facilities are subject to this Order.

One commenter stated that the BLM does not have any means of routinely verifying the threshold criterion of 100 ppm H_2S in the gas stream to ensure that all wells which meet the criterion are properly subjected to the requirements of this Order. The BLM conditionally accepts many types of data from oil and gas operators with respect to wells on Federal and Indian oil and gas leases. However, the BLM reserves the right to conduct or require an independent analysis of the gas.

Two comments were received regarding the limits of the authorized officer's discretionary authority with respect to enforcement where major isolations exist. This Order supplements the existing oil and gas operating regulations (43 CFR 3160), and the discretionary authority is defined throughout 43 CFR 3163. Further, the introductory paragraph in section III of this Order has been rewritten to clarify this authority and additional guidance will be provided to the BLM's authorized officers via internal manuals.

It was suggested that all specific references to Onshore Order No. 1 be removed. The BLM agrees with this recommendation since Order No. 1 is currently being revised. However, general references to Onshore Order No. 1 have been retained in this rulemaking because various provisions are applicable to Order No. 6.

One commenter suggested that the status of H_2S and SO_2 under the Comprehensive Environmental Resource Compensation and Liability Act (CERCLA) should be discussed. CERCLA specifically exempts natural gas. The Environmental Protection Agency has considered all constituents of natural gas, such as H_2S and SO_2 as meeting this exemption. Therefore, the comment was not adopted.

One commenter felt that it is undesirable for the BLM to classify the severity of each violation, state the

rective action, and specify the mal abatement period in the Order. he oil and gas industry and its associations have indicated in numerous meetings with BLM representatives that they would like to know how the BLM will generally view non-compliances and the normal enforcement actions. Therefore, based on this consideration, the BLM has decided to incorporate these provisions in all its Onshore Oil and Gas Orders.

It was recommended that this rule be made effective at least 60 days after the date of publication to provide operators adequate notice. This suggestion has been adopted.

Specific Comments

I.A. Authority

One commenter contended that the terms of this Order should be promulgated either as an amendment to 43 CFR part 3162 or as an appendix to 43 CFR part 3160 so that it would be included in the Code of Federal Regulations. The commenter stated that publication of an Order results in redundancy and inconsistency, but did not identify any inconsistency. No redundancy or inconsistency has been nd. As authorized by 43 CFR 3164.1, Order implements and supplements e requirements of 43 CFR part 3162. It is being properly promulgated through the notice and comment procedures of the Administrative Procedures Act. The Code of Federal Regulations makes reference to the Order's existence and location in the **Federal Register.** Technical requirements of this type are more appropriately addressed in an Onshore Oil and Gas Order than in general regulations.

One commenter stated that to track the enabling statutes, this Order should take the form of operating guidelines with suggested violation levels, rather than strictly enforceable minimum standards. The commenter did not cite any provisions in the enabling statutes that prohibit the Secretary of the Interior from promulgating strictly enforceable minimum standards. The statutes cited in the authority section of this Order give broad rulemaking authority to the Secretary (See especially 30 U.S.C. 187 and 189). Numerous Orders imposing such minimum standards have been promulgated. Onshore Oil and Gas Orders No. 2 through 5 also contain trictly enforceable minimum standards h specified violation levels.

One commenter contended that the BLM lacks statutory authority to assess strict liability type penalties under 43 CFR 3163.1. The BLM did not propose any revision of 43 CFR 3163.1 in the current rulemaking; so no response is required. The commenter is referred to the preamble in the final rule promulgating 43 CFR 3163.1 published February 20, 1987 (52 FR 5384).

I.B. Purpose

Two commenters suggested that the BLM should enter into a Memorandum of Understanding (MOU) with the Federal Occupational Safety and Health Administration (OSHA) regarding protection of "essential personnel" to avoid confusion. The BLM has coordinated with OSHA in the development of this Order and both agencies agree that no conflict or overlap exists. The references to "essential personnel" in the Order are for control of the well (43 CFR 3162.5–2) and for protection of public health and safety (43 CFR 3162.5–3). An MOU is not necessary for either agency to implement regulations pertaining to their respective authorities, and therefore, this suggestion was not adopted.

The phrase referring to enforcement actions was removed and the wording changed to be consistent with the provisions contained in the Order. It is not the intent of this Order to specify enforcement actions, but rather the gravity of violations, probable corrective actions, and the normal abatement period for each requirement.

I.C. Scope

Two commenters recommended that the Order provide for a specific exclusion from the minimum standards for "remote facilities" where human life or property would not be in jeopardy. They further indicated that if an exclusion is not provided, operators would routinely request variances from minimum standards for such wells which would create unnecessary paperwork for the operator and the BLM. The purpose of the Order is to ensure control of the well and hence a conservation of the hydrocarbon resource as well as to protect public health and safety. The Order requires only a drilling operations plan for such "remote" wells and, in general, a variance from those minimum standards would not be granted.

One commenter stated that the Order should apply to Indian Mineral Development Agreements. The BLM provides technical assistance to the Bureau of Indian Affairs in the review and enforcement of these agreements. The BLM is presently developing a policy to address its operational responsibilities concerning such documents and the applicability of this Order.

It was also suggested that the Order should not apply to wells in unit agreements including American Petroleum Institute (API) unit agreements, except for those drilled on Federal or Indian lands. The applicability of this Order will be consistent with the provisions contained in individual agreements and the agency's current policy regarding the jurisdiction and enforcement of all oil and gas operating regulations for non-Federal wells committed to such agreements.

For consistency with the changes made in response to the comments on Section III.B.2.b.ii.(e), the words "or property" have been removed from the first sentence.

II. Definitions

Several comments indicated that confusion existed in use of the terms "release * * * that may endanger the public" and "potentially hazardous volume". For clarification, the term "release . . . that may endanger the public" has been removed and references are now made to the term "potentially hazardous volume" which has been defined in Section II, of the Order. The ambient air concentrations identified in this definition are derived through radius of exposure calculations and are used to determine if a potentially hazardous volume of H_2S exists.

It was recommended that a definition be included for the term "remote facilities" based on a suggested language change in the Requirements section of the Order. It is not prudent to classify wells subject to the Order by virtue of their distance from public facilities. Therefore, the suggestion was not adopted.

Authorized Representative. This term was not necessary for this Order and was removed. As a result, several definitions have been redesignated in the final rule.

Escape Rate. One commenter suggested a language change for item 1. of this definition. Such language was redundant to the criteria used in the definition of "Radius of exposure" and, therefore, was not adopted.

Two commenters felt that the use of "absolute open flow rate" (AOF) for an entire production facility was unreasonable while five commenters felt that it was unreasonable to use this standard in calculating the escape rate for a gas well. For drilling wells, the five commenters suggested alternative language of "maximum wellhead deliverability against zero back pressure." One commenter suggested

that the operator should be allowed a choice of methods to calculate the escape rate for wells. It was also suggested that a new subcategory be developed for exploratory wells. The BLM recognizes the commenters' desire for flexibility, but believes that its obligation for the protection of public health and safety is an overriding concern. Therefore, the agency used a more conservative approach in calculating the escape rate by using an AOF determination for individual wells and the maximum daily gas handling volumes for production facilities. One commenter suggested that the operator should be given a choice of methods to calculate the "escape rate" in developed areas. The commenter is referred to the definition which allows the operator to use data from offset wells in lieu of calculations, if satisfactory to the authorized officer.

Essential Personnel. It was suggested that the term "essential personnel" be removed since non-essential personnel may be required to stay at their station when H_2S is present. The definition of "essential personnel" indicates that persons who have a necessary function when H_2S is present, would be classified as "essential personnel." Further, the Order states that all personnel shall be trained and that non-essential personnel shall be moved to a safe area once 10 ppm of H_2S in the ambient air is reached at any detection point. Therefore, this suggestion was not adopted.

Two commenters indicated that OSHA rules adequately cover essential personnel. This Order augments OSHA requirements in that it provides for the protection of essential personnel from the standpoint of maintaining control of the well for the purposes of public health and safety and conservation of the hydrocarbon resources.

Three commenters recommended that all Government personnel, including the BLM's inspectors, be subject to the same training and provisions of this Order as apply to "essential personnel." Inspectors are considered non-essential personnel for purposes of this Order. However it is BLM policy that they be properly trained and equipped prior to inspecting H_2S operations.

Gas Well. It was suggested that this definition be consistent with other BLM policy. This suggestion was adopted and the definition changed accordingly.

H_2S Drilling Operations Plan. Three commenters suggested that this term be changed to "H_2S Contingency Plan" to be consistent with other BLM regulations and Orders. The citation in the regulations at 43 CFR 3162.5–1(d) is general in nature and is supplemented by this Order. Therefore, no change is necessary. The references to H_2S Contingency Plan in Order No. 1 have been removed and replaced by H_2S Drilling Operations Plan and Public Protection Plan, as applicable. Requiring only a Drilling Operations Plan and, when necessary, a Public Protection Plan will save submission of unnecessary paperwork and is more definitive in nature.

Major Violation and *Minor Violation.* It was suggested that the violations be incorporated as guidelines only. The commenter is referred to the BLM's previous response under Section I.A. of this preamble. Two commenters recommended that a "moderate" violation level be incorporated to better utilize the authorized officer's discretionary authority and to avoid upgrading minor violations to major ones. It is the intent of the BLM to upgrade minor violations to major where warranted. The BLM has determined that it will classify violations as either major or minor as defined in 43 CFR 3160.0–5. For further justification regarding violation levels, the commenter is referred to the preamble of the final rule implementing the Federal Oil and Gas Royalty Management Act published on February 20, 1987 (52 FR 5384).

Oil Well. It was suggested that this definition be consistent with other BLM policy. This suggestion was adopted and the definition changed accordingly.

Production Facilities. For consistency with BLM policy, the words "for royalty purposes" have been removed and replaced with "approved measurement point."

Prompt Correction. It was suggested that immediate correction of all alleged noncompliances should not be required, but that many "discrepancies could be safely delayed." The inclusion of this standard is necessary to resolve those noncompliance actions which cause or threaten immediate, substantial and adverse impacts on public health and safety. Therefore, this comment was not adopted.

Radius of Exposure. One commenter pointed out that use of different methods and calculations using the Pasquill-Gifford equation for the 100 and 500 ppm radii of exposure results in different radii of exposures. The BLM recognizes this and provides for use of other models if approved by the authorized officer. The operator would be required to demonstrate the applicability and acceptability of the model to the situation. Three commenters indicated that there is a high degree of variability in air quality models recommended for use when the H_2S concentration exceeds 10 percent. One of the commenters suggested that the Pasquill-Gifford equation coupled with the other assumptions is so conservative that it could not be applied to concentrations in excess of 10 percent, and that section II.S.3. should be removed. Another commenter questioned how one of a series of models is to be selected. The BLM agrees that there is a high degree of variability between models, and therefore the operator has the option to utilize the model most applicable to the specific situation. The EPA's "Guidelines on Air Quality Models—(EPA–450/2–78–027R)" is intended to assist operators in this selection. The BLM does not agree that the Pasquill-Gifford equation is extremely conservative, but rather that its assumptions become less valid at concentrations in excess of 10 percent in stable atmospheres. Therefore, the suggestion to remove section II.S.3. was not adopted. Alternative wording was also suggested for section II.S.3. so that the operator would not be limited to those models contained in the EPA publication previously referenced. This suggestion was adopted and the language incorporated into the Order.

III. Requirements

In reference to the opening paragraph, two commenters suggested that the discretionary authority of the authorized officer be limited. One of the commenters suggested that the authorized officer's authority to require measures that vary from the minimum standards in the Order be amended to require the mutual consent of the operator. The BLM assumes a regulatory role in setting the minimum standards and this rulemaking process provides for operator input. These are minimum standards that would apply on a national basis. The authorized officer will rely on staff for any additional requirements deemed necessary on a local or geographic basis and if warranted, issue a Notice to Lessees (NTL) pursuant to 43 CFR 3164.2. All additional requirements would be subject to review pursuant to 43 CFR 3165.3. Therefore, the suggestion was not adopted. However, for purposes of clarity, the introductory paragraph in section III. was rewritten.

A.1. Several commenters suggested that when there are multiple filings for wells in a single field, the operator should be allowed to submit one Drilling Operations Plan, supplemented by the well site diagram for each well as required in Onshore Oil and Gas Order No. 1. The BLM agrees that this would save paperwork for both the operator and the authorized officer. This

ggestion was adopted and expanded include Public Protection Plans.

One commenter suggested that except where a general populace alert program is being used, the BLM should not require a Public Protection Plan for approval, but rather have the operator certify that one will be prepared and in place prior to the provisions of III.C.1.b. going into effect. The BLM has a regulatory responsibility to ensure that reasonable and prudent measures to protect public health and safety are in place before approving any action within its authority. Implementation of the suggested procedure would not fulfill that responsibility.

It was suggested that the following be required in the Drilling Operations Plan: duties, responsibilities, and procedures to be initiated at various H_2S concentrations; procedures for evacuation of personnel; agencies to be notified; and a list of medical personnel and facilities. The duties, responsibilities, and procedures for H_2S concentrations are required in section III.C.; the procedures for personnel evacuation in section III.C.3.e.; and the agencies to be notified in section III.A.3.b. of the Order. The requirements for medical personnel and facilities are vered by OSHA regulations and are within the BLM's authority.

The scope of this section was expanded to include the BLM's intent that a single Public Protection Plan may also be submitted for a lease, communitization agreement, unit or field where applicable. To eliminate redundancy, the phrase "and the APD shall not be approved by the authorized officer" was removed from the last sentence of the first paragraph.

A.1.a. Several commenters stated that the requirement to include a statement of certification unnecessarily extends the normal contractor/operator working relationships and suggested alternative wording. The BLM agrees that certification is unnecessary since the contractor is obligated to provide such training and the operator is responsible for securing a written statement in accordance with the requirements of this Order. The phrase "of certification" has been removed from the provision.

A.1.b. Four commenters questioned the requirement of a map showing the terrain of the area surrounding the well site. It was suggested that the requirement be removed or that reference be made to Onshore Oil and s Order No. 1 which requires mission of a topographic map. owledge of the surrounding terrain is critical to evaluation of the H_2S Drilling Operations Plan. However, if the topographic map submitted in accordance with Order No. 1 is of sufficient clarity, scale and coverage, it would suffice in meeting this requirement. One commenter suggested that due to the long lead time between approval and actual drilling, the operator be allowed to submit two diagrams. The BLM agrees in part with this recommendation. If conditions change from the time an APD containing the initial diagram is approved to the time of actual drilling, a Sundry Notice with a revised diagram reflecting the necessary changes can be submitted for approval.

One commenter suggested that weather/seasonal changes be listed in this requirement. The dispersion models are conservative and deal with most temperature and weather conditions. In addition, the authorized officer may request additional information, when necessary. Therefore, this suggestion was not adopted. The same commenter suggested that "essential personnel" be specifically identified here and that all rig personnel be treated equally in the Order. The BLM is responsible only for those personnel necessary for well control (i.e., essential personnel) and OSHA is responsible for general worker safety. Therefore, the operator should have the latitude to determine which category of personnel are necessary to meet the minimum safety standards. It was also suggested that a requirement to include the location of permanent sensors and audible/visual alarms be identified here. The commenter is referred to section III.C.3.c. which specifically requires the location for such equipment.

A.1.c. Four commenters questioned the need for a complete description of the H_2S equipment/systems. They felt that it would be a burdensome submission of information. The BLM partially addressed this concern by removing the words "and their use." It is the BLM's intent for the operator to provide a complete description of specific equipment/systems required in the Order because such a description is necessary for the authorized officer to properly evaluate the acceptability of the H_2S Drilling Operations Plan to fulfill the BLM's public health and safety responsibilities.

Two commenters questioned the requirement for remote controlled chokes on all drilling wells. The BLM considers this equipment necessary for timely and efficient well control so as to minimize the release of H_2S. In areas where there are known low volume/low pressure reservoirs, variances should be requested by the operator.

Three commenters suggested that the word "permanent" in section III.A.1.c.iii. be changed. The BLM agrees that this word is not appropriate since the duration of drilling operations is short term.

It was recommended that the heading "Mud program" be changed to "Mud program and scavengers". Scavengers are a type of additive which is included in the subsection. Such a change would be repetitive and therefore, was not adopted.

A.2.a. Two commenters suggested that the operator simply calculate the radii of exposure and advise the authorized officer when the criteria in Section III.B.1. have been exceeded rather than submit the calculations. The BLM considers this information necessary to identify all facilities subject to this Order and ensure compliance with the required radius of exposure calculation methods. It is the BLM's intent to review the submission on a timely basis. Therefore, this suggestion was not adopted.

It was suggested that the respective time periods of 180 days and one year for submission of radii exposure calculations and a Pacific Protection Plan for each existing production facility be significantly shortened. The BLM considers these time periods as being reasonable and consistent with the operational equipment requirements specified in section III.D. of the Order. The commenter also suggested that the time period of 60 days for submission of a Public Protection Plan for a new production facility, where applicable, should be increased. The BLM considers 60 days to be adequate time for the preparation and submission of this plan. The 60-day requirement is also commensurate with timeframes required by the BLM for other plans (e.g. site security plans).

Two commenters suggested that water flowlines be excluded from the calculations required in this paragraph. The BLM agrees and this change has been made in the final rule.

A.2.b. Two commenters suggested various timeframes for the operator to submit an H_2S component gas analysis for each well to the authorized officer. The authorized officer has the authority under 43 CFR 3162.4–2 to require tests when necessary.

A.2.c. Several commenters stated that the notification requirement for unspecified changes in H_2S concentration or the radius of exposure was not reasonable and suggested various limitations and timeframes. The BLM agrees in part and the requirement has been changed to apply only when increases of 5 percent or more of the H_2S concentration or radius of exposure

occurs over that initially required under sections III.A.2.a. and III.A.2.b. of the Order. The 60-day requirement for notification is considered reasonable and has been retained.

A.3.b. Three commenters questioned the meaning of the phrase "that may endanger the public" and suggested alternate wording. The BLM agrees in part and replaced it with "a potentially hazardous volume" which has been defined in the Order. In addition, for purposes of clarity, the phrase "accidental release" has been changed to "any release". One commenter stated that the notification requirement is redundant with the requirements of the Superfund Amendments and Reauthorization Act (SARA), Title III. SARA, Title III does not ensure that the authorized officer will be notified and, therefore, this requirement has been retained. Two commenters questioned the need to elaborate on subsequent violations. The BLM agrees and such wording has been removed. One commenter suggested that the violation be major. The BLM is primarily concerned with adequate operator implementation of the Public Protection Plan and control of the H_2S upon detection of a release that may affect public health and safety rather than a notification requirement that does not directly affect public health and safety. Therefore, this suggestion was not adopted. It was also recommended that the criteria for reporting and the category of violation be tied to the severity of the release similar to the criteria in the current Notice to Lessees—3A. Since public endangerment is the primary criteria and not necessarily the volume of release, this suggestion was not adopted.

For purposes of consistency with the definition of "potentially hazardous volume", the term "SO_2" has been removed from this requirement. Requirements regarding SO_2 are addressed in other sections of this Order. SO_2 is not associated with ordinary release of H_2S unless H_2S is ignited. However, the BLM does not intend by deleting this reference to imply that SO_2 is not potentially hazardous.

B.1. One reviewer felt that the phrase "and special precautions taken" in the introductory paragraph is superfluous. The BLM agrees and the phrase has been removed.

It was recommended that a single Public Protection Plan be required where wells and facilities exceeded an unspecified minimum level or are located within ¼ mile of a public place. The Order provides for a single plan in section III.B.2. The recommended criteria would be more stringent than the proposed minimum standard and radii of exposure is a more reasonable criterion for public safety than distance alone. Therefore, this suggestion was not adopted.

One commenter suggested that an exception to public notification be written into Public Protection Plans and accepted where releases of H_2S are common (e.g., plant upsets). Any releases resulting in H_2S levels as defined under "potentially hazardous volume" constitute a public hazard and warrant public notification. Therefore, this suggestion was not adopted.

It was recommended that the phrase "or other areas where the public could reasonably be expected to frequent" as used in this section and other sections of the Order be changed to "or other public areas that can expect to be populated". No reason was provided and the phrase did not appear to improve clarity. Therefore it was not adopted.

B.2.a.i. Several commenters were received suggesting that the phrase "potentially hazardous release" be changed or defined. The BLM agrees and the phrase has been changed to "potentially hazardous volume". In addition, the term "SO_2" has been removed for consistency with the definition of "potentially hazardous volume".

For purposes of consistency with section III.A.1. and to clarify the BLM's intent, the phrase "For production" has been removed from the beginning of the second sentence.

B.2.a.ii. One commenter felt that release of a potentially hazardous volume of H_2S should not be classified as a violation. The Order does not provide for a violation for the incidental release of H_2S because it could occur at anytime beyond the operator's control. However, the Order does provide that, upon detection of such a release, the operator is responsible for implementing the Public Protection Plan in order to protect public health and safety. Failure to implement this plan in the event of a release constitutes a violation. The same commenter suggested that the operator should have strong input in the Public Protection Plan. Since the operator is responsible for preparing the plan, he/she is the primary contributor to the document.

The term "SO_2" has been removed for consistency with the definition of "potentially hazardous volume".

B.2.a.iii. One commenter suggested that the abatement period for workover operations be changed to 24 hours. The BLM agrees and has adopted this recommendation.

B.2.b.i. One commenter suggested that the second sentence of this paragraph be removed and wording added in the following section to allow the use of general populace alert plan as is used in Texas. Another commenter felt that the wording was ambiguous. It is the BLM's intent that alternate plans may be used and latitude for alternatives is provided in the existing wording. However, if the operator proposes to use a populace alert plan only, a variance should be requested. Further, the language provides latitude to the operator to submit an adequate plan in areas of high population density, given the variety of conditions that may occur nationwide.

B.2.b.ii.(b) Four commenters suggested the use of "exposed to H_2S concentrations of 100 ppm" in this provision since the term "area of exposure" is not defined. The suggestion was adopted in part and the wording changed to "the 100 ppm radius of exposure". For clarity, the phrases "those responsible for safety of public roadways" and " as defined by the applicability criteria in section III.B.1." were incorporated into the first sentence. Two commenters suggested removing the last sentence, since the operating provisions of the Order provide adequate protection for nearby residents, while another commenter felt that the requirement was not stringent enough to provide adequate public protection. The BLM agrees that adequate public protection measures are provided in other sections of the Order, and therefore the sentence has been removed.

B.2.b.ii.(e) One reviewer recommended that the words "by visit or letter" be added after the words "Advance briefing". This suggestion was adopted and modified to read "Advance briefings, by visit, meeting, or letter . . ." Several commenters suggested that the phrase "or things that may be endangered" be removed from the end of the section since one of the primary purposes of the Order is to protect the public. The BLM agrees and it has been removed.

B.2.b.ii.(g) In order to clarify the BLM's intent to provide protection from the hazards of SO_2 and for consistency with section III.C.4.a.iv., a reference to SO_2 monitoring has been added for inclusion in the Public Protection Plan.

C.1. One commenter expressed confusion over the applicability of the 100 ppm in the gas stream criterion and the 20 ppm ambient concentration and stated that the Order appears to differ from the criteria specified in Onshore Oil and Gas Order No. 2. The reviewer is directed to the General Comments

section of this preamble for clarification on the applicability criteria. The 10 ppm ambient concentration for taking measures to protect personnel is based on the revised OSHA criteria published in the Federal Register on January 19, 1989 (54 FR 2490). For consistency, the BLM will make appropriate changes to Order No. 2.

It was suggested that the Drilling Operations Plan be available at the well site only when operations are actually being conducted. The BLM agrees and the words "during operations" have been added to this section. The section has been further expanded to make clear when the operator is subject to this requirement.

C.1.b. One commenter disagreed that H_2S training should be completed and equipment be made operational at 500 feet above or 3 days prior to the first potential H_2S zone while another commenter endorsed the requirement, but suggested that the violation be classified as minor. It is critical that operating personnel be adequately trained a reasonable amount of time prior to the date it is expected that H_2S will be encountered so that they can respond competently and quickly to protect public health and safety. The BLM considers the requirement reasonable and that the violation classification for failure to take these measures is consistent with the definition of "major".

It was recommended that the caveat of "or the atmospheric concentration of H_2S reaches 10 ppm" be added to the criteria in this section. The 100 ppm criterion is used solely for determining which wells are subject to the provisions of this Order, and should not be confused with the ambient standards to which the operator is subject once the Order is in effect. Since this section deals with the basic applicability of the Order rather than ambient concentration, this suggestion was not adopted.

It was recommended that the phrase "unless detrimental to well control" be removed from subsection i. The BLM believes that situations do exist where shutting the well in may be detrimental to well control, which is one of the primary lines of defense to prevent a release of a hazardous volume of H_2S gas. Therefore, the suggestion was not adopted.

One reviewer suggested that for consistency, the time periods for notifying the authorized officer as used in this section should be stated in terms of business days. The BLM agrees and the wording has been changed in subsection iii. Time periods for corrective actions are properly stated as hours or calendar days.

Two commenters suggested that the authorized officer be authorized to approve interim resumption of operations prior to the requirements being met in this section where the operator can show that adequate safeguards are being employed to protect the public. It was recommended that the words "general populace alert plan" also be inserted here. The BLM considers the minimum standards to be reasonable. In addition, the authorized officer may approve resumption of drilling operations in emergency situations, or a variance could be requested by the operator. Therefore, these suggestions were not adopted.

C.2.a. Two commenters disagreed that two means of egress should be required at all well sites. The BLM considers this requirement important to maximize safe egress from drilling and completion sites. The Order provides for only one road and a foot path when a secondary road is not practical. Three commenters suggested that the violation should be changed from major to minor. The Bureau agrees with this recommendation since failure to meet this requirement does not meet the criteria for a major violation as defined in this Order.

C.2.b. Two reviewers suggested that the violation be changed from major to minor. The BLM agrees with this recommendation since failure to meet this requirement does not meet the criteria for a major violation as defined in this Order.

Two commenters stated that secondary escape routes are just as important in workover operations as they are for drilling and completion operations. The BLM believes that more unknown factors such as H_2S concentration, pressures, and flow rates exist in drilling and completion operations and therefore, require more safety contingencies.

C.3.a. One commenter reiterated earlier concerns that the BLM is establishing recommended practices as enforceable regulations here. The commenter is referred to the discussion in this preamble on section 1.A.

Three commenters suggested that the requirement to "certify" training of all personnel be removed for various reasons related to contract relationships and numerous suggestions for alternate wording were made. The BLM recognizes the potential contractual problems associated with the word "certify" and has replaced it with the word "ensure".

Two commenters suggested that the training requirements should apply only to essential personnel. The BLM believes that all personnel working around H_2S should be trained although additional provisions are made for "essential" personnel. Therefore, this suggestion was not adopted.

One commenter questioned the jurisdiction of this Order since specific operations were not listed. This Order extends to the same operations that are subject to the oil and gas regulations contained in 43 CFR part 3160.

It was suggested that the phrase "or its equivalent" in subsection i. be removed. No rationale was provided and since the driller's log recommended by the International Association of Drilling Contractors is not used in all geographic areas, this suggestion was not adopted.

It was recommended that the violation in subsection iii. be changed from major to minor. The BLM agrees with this recommendation since failure to meet this requirement does not meet the criteria for a major violation as defined in this Order.

C.3.b.i. Several commenters suggested that the word "ensure" be changed to "require" for various reasons relating to the operator's ability to oversee subcontractors. It is the BLM's intent that the word "ensure" as used in this Order means that an operator will mointor contractor/subcontractor operations on site such that they meet the minimum standards as set forth in this Order. Therefore, this suggestion was not adopted.

It was recommended that the word "shall" be changed to "must" with respect to providing a breathing apparatus for the derrickman. The word "shall" means that it is required, and therefore this suggestion was not adopted. It was also suggested that provisions for a line from a cascade system be added here. The Order does not preclude the use of this system. However, the BLM considers this proposal to be unreasonable as a minimum standard. Therefore, this suggestion was not adopted.

One commenter suggested that the Order specifically require the use of "pressure-demand type" breathing apparatus. The cited standard (ANSI) Z88.2–1980) includes this requirement as well as other standards for this equipment. This standard sufficiently describes the requirements; however, this section of the Order was modified to clarify that all working equipment must be a pressure-demand type.

The first sentence of this requirement was modified to clarify that the curent edition of the ANSI standard is applicable.

C.3.b.ii. It was recommended that breathing apparatus be required for all personnel. The BLM believes that a prudent operator will provide equipment for all personnel, but as a minimum standard, given the BLM's limited authority, it will be required for essential personnel only.

C.3.b.iii. Two commenters suggested that the violation for a lack of communication devices should be changed from major to minor. The BLM considers communication essential to the proper implementation of a Drilling Operations and/or Public Protection Plan. Since communication has a direct bearing on public health and safety, the violation of major was retained.

C.3.c. Three commenters suggested that the threshold limits for the visual and audible alarms of 10 and 15 ppm, respectively, were not appropriate, especially the 15 ppm level. The BLM recognizes the standard of 20 ppm as used in industry and advocated by the American Petroleum Institute. However, to be consistent with the Federal OSHA requirements, the BLM adopted the limits of 10 ppm time-weighted average and 15 ppm short-term exposure for H_2S.

It was recommended that a sensor be required in the cellar in lieu of the bell nipple, and that a sensor be placed in the mud house. It is logical that H_2S would break out at the bell nipple and be sensed earlier than in the cellar itself. A sensor at the bell nipple should sense any H_2S breaking out of the mud before it reaches the shale shaker. Therefore, this suggestion was not adopted.

One commenter suggested that a requirement for a public address system be added. This requirement may be appropriate for confined operations but not in unconfined areas such as the majority of onshore locations. The majority of onshore locations do not have camp facilities associated with the drilling operation, and for those that do, the authorized officer may require such a provision on a site-specific basis. Further, the briefing areas provide a place for communication with workers. Therefore, this suggestion was not adopted. The same commenter also stated that testing of the monitoring equipment to manufacturer's standards was not appropriate since it would allow the manufacturer to determine testing and calibration standards. The BLM currently considers the manufacturer's recommended standards to be reasonable as minimum standards for testing. Another commenter suggested that the Order incorporate calibration standards. BLM agrees and modified the text to include the calibration of H_2S detection and monitoring equipment in accordance with the manufacturer's recommendation. Also, the Minerals Management Service of the Department of the Interior is conducting an evaluation of calibration frequencies. BLM will consider the results of this evaluation and possibly develop calibration frequency standards. Any alternative methods of calibration or suggestions regarding calibration frequency requirements may be sent to the Director of BLM at the address specified in the beginning of this preamble.

C.3.d. One commenter suggested that the wind direction indicators be placed at the briefing areas since they may not be visible if the light plant fails. This possibility was considered, and the present wording "shall be visible at all times" provides the operator with latitude to meet this requirement on a site-specific basis. Therefore, this suggestion was not adopted.

Two commenters suggested that it may be necessary to have two signs posted on the access routes leading to a drilling site to allow large vehicles or those with trailers adequate time and space to turn around safely. This suggestion was adopted in part and the provision has been amended to allow vehicles adequate opportunity to turn around prior to reaching the well site.

Two commenters expressed concern as to the requirement for bilingual or multilingual signs. One commenter questioned the authorized officer's knowledge to determine where such a requirement is appropriate and the other requested that the current, in-place signs be accepted or grandfathered to minimize economic impacts to industry. The authorized officer is aware of those areas where bilingual or multilingual signing would be appropriate and the number of areas is considered to be minimal. Therefore, the economic impact would be minimal.

Several commenters stated that the requirement to have essential personnel put on their masks, move non-essential personnel, and display red flags when 10 ppm of H_2S is detected at any sensing point was unnecessarily restrictive. The commenters further suggested alternative wording. The BLM believes that such measures are essential to ensure adequate well control and public health and safety. The BLM agrees with one reviewer that operations should be allowed to proceed once these measures are implemented. This recommendation was incorporated by separating part of the language from section 3.C.d.vii and placing it into the new section 3.C.e. which provides for securing the area and allowing operations to proceed once non-essential personnel have been moved and essential personnel have donned protective breathing apparatus. One commenter suggested that this requirement only be applicable to detection points as required by the Order. The BLM believes that any prudent operator will not ignore readings from any detection point which indicates a problem. These requirements are minimum standards, and inspection and enforcement will be in accordance with the approved Application for Permit to Drill. Therefore, this suggestion was not adopted.

C.3.e. For purposes of clarity, the phrase "an area secured and conditions are below 10 ppm" has been removed and replaced with the word "accomplished".

C.4.a. It was suggested that well testing and swabbing during completion and workover operations should be specifically discussed and the operator should be granted more flexibility. The BLM believes there is little basic difference in operating procedures here and that the minimum standards are applicable to workovers and completions. Furthermore, where differences do exist, they have been stated. Therefore, this suggestion was not adopted.

C.4.a.i. Several commenters disagreed that the use of a mud system should be the minimum standard for drilling, completions, and workovers. All commenters contended that aerated mud and non-mud systems can be used in some situations, primarily in low-pressure H_2S zones. The BLM recognizes that these situations exist. However, in the interest of public health and safety, the use of mud systems as the minimum standard is considered appropriate. The operator may request a variance in those cases cited by the commenters.

C.4.a.ii. Two commenters suggested that this provision be amended to read "where operating pressures are sufficient". Neither commenter provided any rationale for their suggestion and the term "sufficient" is ambiguous. The existing wording as a minimum standard meets the intent of protecting public health and safety.

C.4.a.iii. Three commenters suggested that the flare line lengths should be changed to 100 feet to be consistent with Order No. 2. Flare lines of 150 feet are considered reasonable for H_2S locations due to the additional risk involved and that larger locations may be necessary. The BLM does not agree that this provision needs to be consistent with Order No. 2 since the two Orders deal with different conditions. Therefore, this suggestion was not adopted.

C.4.a.v. Two commenters felt that this requirement was unnecessary and that violation should not be major. The considers that this measure is sonable for the protection of public health and safety and that the potential hazard to the public if it is violated is significant. Therefore, the violation gravity of major is appropriate.

C.4.a.vi. It was suggested that the wording be changed to require SO_2 monitoring equipment only when there is a reasonable expectation that the public may be exposed to 2 ppm or greater of SO_2. It is the BLM's intent that this provision include "essential personnel" who are necessary for well control as well as the public. Therefore, this suggestion was not adopted.

One commenter stated that the 2 ppm SO_2 level should not be a threshold, but a continuous level. It is the BLM's intent that the minimum standards used in this Order are for sustained levels. In addition, the reference to 2 ppm or greater of SO_2 in parentheses was removed since it was unnecessary.

C.4.a.vii. One commenter pointed out that the BLM did not use any SO_2 applicability criteria in determining when a public protection plan is to be submitted. The BLM used only H_2S concentration in developing the plicability criteria, but recognizes that results from flaring the H_2S and is ardous. Therefore, keying solely on H_2S also includes safety measures for SO_2 as a burned by-product of H_2S.

C.4.a.viii. Three commenters suggested that the requirement for a remote controlled choke for all operations was unnecessary and made various suggestions as to the conditions in which it should be required, including specific pressures, abnormal pressures, or proximity to public areas. In addition, it was suggested that the violation gravity be changed from major to minor. The remote controlled choke is considered necessary for well control not only for purposes of public health and safety, but also for conservation of the resources. For these reasons, the violation gravity has been retained as major.

C.4.a.ix. Several commenters suggested that requiring rotating heads for all exploratory wells is overly restrictive and that they should only be required when drilling in an underbalanced condition or where formation pressure cannot be reliably estimated. Exploratory drilling necessarily involves a high degree of ertainty as to the pressures, itions, or formations that may be countered during drilling operations. Therefore, in the interest of public health and safety this requirement is considered necessary.

C.4.b.i. Two commenters urged that the requirement for maintaining a pH of 10 or greater in mud systems containing polymers be eliminated or an exception be granted for polymer muds. The commenters failed to be specific about the type of polymer system and polymer use. The term "polymer mud" includes many different types and chemically different polymer compounds. Since most polymers are mainly used for viscosity development, versus fluid loss control or shale stabilization, higher pH in many polymer systems yields maximum viscosity development. Individual mud system proposals contained in an Application for Permit to Drill (APD) are required to consider the necessity of higher mud pH when inhibiting H_2S returns to the surface and to weigh the expense of eliminating some mud additives not conducive in high pH mud environments to those that are. This minimum standard also contains a provision for the use of lesser pH muds if formation conditions or mud types justify it. The commenters also stated that corrosion control can be achieved by means other than increased pH. Another purpose of increasing pH is to prevent H_2S from reaching the surface by formation of sulfide radicals and increased scavenger efficiency. Therefore, the minimum standard for maintaining a mud pH of at least 10 is retained unless specifically approved in the APD or through a variance request.

It was suggested that the Order state that clear fluids may be used for workover and completion activities when such fluids are adequate for well control. The Order is silent on this point, and therefore such fluids may be used during those activities.

The first sentence has been reworded to clarify the BLM's intent to require a pH of 10 as a minimum standard, unless formation conditions dictate otherwise. In addition, the word "prevent" has been changed to "minimize" to more accurately describe the effects of pH with respect to H_2S.

C.4.b.iii. One commenter was confused by this requirement since it appeared to duplicate C.4.b.i. There is a significant differences between controlling the pH of the mud and the addition of scavengers and additives to the mud to control surface observed H_2S. It is because additional measures may be necessary when drilling unknown formations to control H_2S reaching the surface even if the 10 ph standard is met. The commenter also suggested that the violation gravity be changed from major to minor but provided no rationale. This suggestion was not adopted.

C.4.c. It was suggested that the word "suitable" in the first sentence be replaced with "designed per the requirements of API Recommended Practice—49 (RP–49)". This Order and RP–49 both utilize NACE standards. However, RP–49 utilizes additional standards not applicable to this requirement, therefore the more specific NACE standards have been referenced.

Several commenters suggested that the word "prevent" in the first sentence of the second paragraph be changed to "minimize" since these measures do not assure the prevention of stress corrosion cracking or embrittlement. The BLM agrees and the wording was changed.

Two commenters pointed out that NACE Standard MR–01–75 is not applicable in concentrations of less than 100 ppm of H_2S. The BLM recognizes this and it should be understood that the requirements of this Order do not apply unless 100 ppm or greater of H_2S is anticipated in the gas stream. However, this standard is deemed appropriate when the applicability criteria for this Order have been met.

It was suggested that the last sentence of the second paragraph be removed since obtaining the manufacturer's verification for H_2S service may be difficult for some existing equipment. The BLM does not see a reasonable alternative approach to determining suitability for H_2S service and considers it necessary for protecting public health and safety. Further, such verification would be difficult only in a very few cases, resulting in a negligible impact to industry overall. Therefore, the BLM considers this requirement to be reasonable and the suggestion was not adopted.

The fourth sentence of this requirement was modified to clarify that the current edition of the NACE standard is applicable.

C.4.d. Two commenters suggested that the paragraph be changed to allow for drill stem tests under certain conditions other than closed-chamber tests during daylight hours. The BLM recognizes that with proper planning and use of appropriate facilities, these tests can be conducted under other conditions. The existing language in the Order provides this latitude, and therefore no changes are necessary.

It was suggested that this paragraph be more specific to ensure that all gas is run through a separator and flared. The requirements of section III.C.4. are applicable to all operations, including testing, completions, and workovers. Therefore, no changes are necessary.

D.1.a. One commenter suggested that the words "that meet the criteria for requirement of H_2S controls but" be inserted between the words "facilities" and "which" to clarify what facilities are meant by the word "all". The initial criterion of 100 ppm H_2S in the gas stream for the applicability of this Order is sufficiently clear to determine the facilities included in this paragraph. Therefore, this suggestion was not adopted.

It was suggested that the timeframe for conformance be changed from 1 year to 6 months. Information submitted to the BLM indicates that it may take as long as 6 months to acquire some of the necessary equipment and since the commenter offered no rationale for the suggestion, the 1-year requirement is considered reasonable.

One commenter suggested that this paragraph make it clear to which equipment this requirement applies. The commenter is referred to the response provided under D.1.a. above.

D.2. It was recommended that the criteria for applicability be changed from 500 to 100 ppm H_2S for storage tank vapors. The commenter did not provide any rationale and the data submitted in response to proposed Order No. 2 in 1984 indicates that with the volumes of gas involved and using standard operating procedures, less than 500 ppm in this situation does not constitute a hazard to public health and safety.

D.2.d. Two commenters suggested that signs with colors of yellow and black should also be allowed under this requirement to be consistent with III.C.3.d.iii. The BLM believes that during production, H_2S hazards are known to be present. Therefore, danger signs (red, white and black) are appropriate rather than using caution signs (yellow and black) which are required during the drilling stage when H_2S may be, but is not necessarily known to be, present. Therefore, this suggestion was not adopted. One commenter suggested that it should be left to the operator's discretion as to the appropriate use of bilingual or multilingual signs. The authorized officers of the Bureau are very cognizant of those areas where such signs are appropriate, and therefore this suggestion was not adopted.

D.2.f. One commenter expressed that flexibility should be provided for those areas where the population adjacent to the H_2S operations is sparse and primarily consists of businesses associated with the oil and gas industry. This provision is intended to protect the general public, and if a situation as described occurs, a variance with appropriate alternate measures could be approved by the authorized officer.

Two commenters suggested that the words "other equivalent means" be added to this paragraph and section III.D.3.c. to provide more flexibility to the operator. This minimum requirement is considered reasonable when the specified criteria are met. The BLM recognizes that special cases will arise where alternative measures may be acceptable but has determined that a variance should be requested in such cases.

In reference to this paragraph and section III.D.3.c., one commenter expressed the view that the criteria of being within ¼ mile of an incorporated area may not be reasonable since some municipalities have incorporated large amounts of undeveloped land. The BLM recognizes this concern, but this would not be true for the majority of field situations. In situations where it does occur, the operator should request a variance.

Two commenters stated that the requirement to keep gates locked could endanger authorized personnel working at the site. The BLM agrees and has added Section III.D.2.g. to make it clear that the gates are to be locked when unattended by the operator. This section also specifies the degree of violation, corrective action, and the normal abatement period.

D.3.b. Several commenters questioned the reasonableness of requiring danger signs at all points where the well flowlines and lease gathering lines cross public or lease roads. They expressed concern that this requirement would cause an unnecessary cost and create potential visual degradation. They also stated that the placement of a sign at the entrance to each field or lease area would be adequate. It is the BLM's intent to identify sources where 100 ppm or more of H_2S in the gas stream may constitute a potential hazard. Therefore, the signing requirement is considered a reasonable measure to protect public health and safety. One of the same commenters also questioned the scope of this requirement. This requirement is applicable to all flowlines up to the approved measurement point.

D.3.d. For consistency with section III.D.2.g., the same requirement concerning locked gates has been established for production facilities under section III.D.3.d. Subsequent sections were redesignated accordingly.

D.3.e. (Redesignated D.3.f.) One commenter questioned what is meant by a "secondary means of immediate well control". The BLM intends this to mean that it is required to be on the stem of the christmas tree and that a wing valve would not meet this requirement. The same commenter recommended that this provision should only be applied to high volume/high pressure wells. All wells subject to the terms of this Order have the potential to create a hazardous environment, not just high volume/high pressure wells. Therefore, this suggestion was not adopted.

Two commenters also suggested that the requirement should be more flexible by specifically allowing the use of remotely operated valves triggered by a fixed ambient monitor. The existing wording provides the flexibility requested, and therefore this suggestion was not adopted.

It was recommended that the requirement for automatic shut-in equipment should be at the discretion of the authorized officer. However, the commenter did not offer any rationale for this suggestion. The BLM considers this requirement to be the appropriate minimum standard in order to promote conservation of the oil and gas resource, protect public health and safety, and prevent environment degradation. Therefore, this suggestion was not adopted.

One commenter suggested that existing wells be "grandfathered" and reviewed on a case-by-case basis with respect to the secondary means of well control specified in this section and the automatic safety valves or shutdowns specified in D.3.g. (Redesignated D.3.h.). Existing wells potentially constitute the majority of the hazards and to "grandfather" them does not meet one of the primary purposes of this Order, which is to protect public health and safety. Therefore, this suggestion was not adopted.

D.3.f. (Redesignated D.3.g.) It was recommended that all existing equipment that is in a safe working condition be specifically accepted as meeting the metallurgy standards, and that equipment which is not in a safe working condition be replaced. By safe the BLM means the equipment is operating as intended. The BLM agrees with this recommendation and has incorporated wording under section D.1.a. to exempt certain production equipment from metallurgical requirements. This exemption would not apply to new operational equipment, equipment that is unsafe, or repair and/or replacement parts.

D.3.g. (Redesignated D.3.h.) One commenter expressed that this requirement was ambiguously worded and suggested alternate wording. The BLM adopted the suggestion in part by adding "or other appropriate shut-in controls for wells equipped with

artificial lifts" at the end of the sentence.

It was noted that no requirement existed for utilizing the safety valves or shutdowns as required by this section. Therefore, a section requiring these controls to be activated upon a release of a potentially hazardous volume of H_2S was created and numbered as section III.D.3.i. in the final rule. All subsequent sections were redesignated accordingly.

D.3.h. (Redesignated as III.D.1.c.) The provisions of this section were intended to apply to both production facilities and storage tanks. Therefore, this section was moved and redesignated as section III.D.1.c. in the final rule. In addition, the wording was slightly modified to clarify the intent of this requirement.

Several commenters stated that the requirement for vapor recovery when the H_2S concentration reached 10 ppm or more at 50 feet from the facility was overly restrictive primarily because it does not constitute a hazard at that level, and the applicability criteria for the Order of 100 ppm in the gas stream was sufficiently restrictive. The 100 ppm concentration in the gas stream cannot be equated to the 10 ppm radius of exposure. A 10 ppm ambient concentration of H_2S implies a flow that could subject the public to a sustained level of H_2S. The 10 ppm level is the maximum acceptable for 8-hour working conditions, but is not acceptable for general public exposure. Further, such facilities are not fenced unless the criteria in D.2.f. or D.3.c. are met. Therefore, the requirement is considered reasonable in view of the concern for public health and safety.

It was suggested that the word "boundary" be added here to clarify the external limit of the facility. The term "production facility" has been adequately defined in the Order, and therefore the suggestion was not adopted.

D.3.i. (Redesignated (D.3.j.) Two commenters stated that although they supported the intent of this section, they felt the wording was awkward and questioned the authorized officer's qualifications to specify the design for modifying the facility. The BLM agrees that the wording is awkward. Further the intent was not to have the authorized officer specify the facility design. Therefore, the wording was changed for clarity and to indicate that the authorized officer will retain approval authority over, but not specify the design for modifying, the facility.

One commenter suggested that the phrase "or other areas where the public could reasonably be expected to frequent" needed to have limits placed on it. The BLM disagrees and this suggestion was not adopted.

It was suggested that this requirement be amended to make it clear that the limits do not apply in emergency or upset conditions. The BLM has partially adopted this suggestion by adding wording to show that it applies to sustained concentrations, but that modifications are subject to review by the authorized officer.

D.4. It was noted that no Violation, Corrective Action, or Normal Abatement Period existed for this requirement. These provisions were added in the final rule.

IV. Variances from Requirements

For consistency with Order No. 2, two commenters suggested that this Order specifically provide for verbal variances to be followed up by written requests. This Order, where appropriate, makes provisions for verbal variances, so that a general provision to that effect is not necessary here. It was also suggested that the Order require that variances be documented for the protection of the operator. This is provided for in the section which requires that variances "shall be submitted in writing" to the authorized officer.

Editorial and grammatical corrections and changes have been made as necessary.

The principal authors of this final rule are Chris Hanson of the Milwaukee District Office, Wisconsin; Hank Szymanski of the Washington, DC, Office; Bill Douglas of the Wyoming State Office, Ken Baker of the Great Falls Resource Area Office, Montana and Jim Rasmussen, formerly of the Elko District Office, Nevada, assisted by Al Riebau of the Wyoming State Office and the Orders Task Group, Mike Pool of the Division of Legislation and Regulatory Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and are included in one of the following approvals: 1004–0134, 1004–0135 or 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral Royalties, Oil and gas exploration, Oil and gas production, Public lands-mineral resources, Indian lands-mineral resources, Reporting requirements.

Under the authorities stated below, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: October 12, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for 43 CFR part 3160 continues to read:

§ 3164.1 [Amended]

2. Section 3164.1(b) is amended by revising the table which is part of § 3164.1(b):

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1.	Approval of operations	Nov. 21, 1983	48 FR 48916, and 48 FR 56226.	NTL-6.
2.	Drilling operations	Dec. 19, 1988	53 FR 46798.	None.
	Site security	Mar. 27, 1989	54 FR 8060.	NTL-7.

Order No.	Subject	Effective date	FEDERAL REGISTER reference	Supersedes
4.	Measurement of oil.	Aug. 23, 1989	54 FR 8086.	None.
5.	Measurement of Gas.	March 27, 1989 for new facilities; August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas; February 26, 1990 for existing facilities producing less than 200 MCF per day of gas..	54 FR 8100.	None.
6.	Hydrogen sulfide operations	January 22, 1991	56 FR	None.

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of May 31, 1930 (30 U.S.C. 301–306); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

Appendix—Text of Oil and Gas Order No. 6

Note: This appendix is published for information only and will not appear in the Code of Federal Regulations.

I. Introduction.
A. Authority.
B. Purpose.
C. Scope.
II. Definitions.
III. Requirements.
A. Applications, Approvals, and Reports.
B. Public Protection.
C. Drilling/Completion/Workover Requirements.
D. Production Requirements.
IV. Variances from Requirements.
Attachments

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior through various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. More specifically, this Order implements and supplements the provisions of § 3162.1—General Requirements; § 3162.5–1(a)(c)(d)—Environmental Obligations; § 3162.5–2(a)—Control of Wells; and § 3162.5–3—Safety Precautions.

43 CFR 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders, when necessary, to implement or supplement the operating regulations and provides that all such Orders shall be binding on the operator(s) of all Federal and Indian (except Osage Tribe) oil and gas leases which have been, or may hereafter be, issued. The authorized officer has the authority pursuant to 43 CFR 3161.2 to implement the provisions of this Order, require additional information, and approve any plans, applications, or variances required or allowed by the Order.

The authorized officer may, pursuant to 43 CFR 3164.2, issue Notices to Lessees and Operators (NTL's), after notice and comment, to supplement or provide variances of this Order as necessary to accommodate special conditions on a State or area-wide basis. Further information concerning variances may be found in section IV. of this Order.

B. Purpose

The purpose of this Order is to protect public health and safety and those personnel essential to maintaining control of the well. This Order identifies the Bureau of Land Management's uniform national requirements and minimum standards of performance expected from operators when conducting operations involving oil or gas that is known or could reasonably be expected to contain hydrogen sulfide (H_2S) or which results in the emission of sulfur dioxide (SO_2) as a result of flaring H_2S. This Order also identifies the gravity of violations, probable corrective action(s), and normal abatement periods.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases when drilling, completing, testing, reworking, producing, injecting, gathering, storing, or treating operations are being conducted in zones which are known or could reasonably be expected to contain H_2S or which, when flared, could produce SO_2, in such concentrations that upon release they could constitute a hazard to human life. The requirements and minimum standards of this Order do not apply when operating in zones where H_2S is presently known not to be present or cannot reasonably be expected to be present in concentrations of 100 parts per million (ppm) or more in the gas stream.

The requirements and minimum standards in this Order do not relieve an operator from compliance with any applicable Federal, State, or local requirement(s) regarding H_2S or SO_2 which are more stringent.

II. Definitions

A. "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR Groups 3000 and 3100 (3000.0–5).

B. *Christmas tree* means an assembly of valves and fittings used to control production and provide access to the producing tubing string. The assembly includes all equipment above the tubing-head top flange.

C. *Dispersion technique* means a mathematical representation of the physical and chemical transportation, dilution, and transformation of H_2S gas emitted into the atmosphere.

D. *Escape rate* means that the maximum volume (Q) used as the escape rate in determining the radius of exposure shall be that specified below, as applicable:

1. For a production facility, the escape rate shall be calculated using the maximum daily rate of gas produced through that facility or the best estimate thereof;

2. For gas wells, the escape rate shall be calculated by using the current daily

absolute open-flow rate against atmospheric pressure;

3. For oil wells, the escape rate shall be calculated by multiplying the producing gas/oil ratio by the maximum daily production rate or best estimate thereof;

4. For a well being drilled in a developed area, the escape rate may be determined by using the offset wells completed in the interval(s) in question.

E. *Essential personnel* means those on-site personnel directly associated with the operation being conducted and necessary to maintain control of the well.

F. *Exploratory well* means any well drilled beyond the known producing limits of a pool.

G. *Gas well* means a well for which the energy equivalent of the gas produced, including the entrained liquid hydrocarbons, exceeds the energy equivalent of the oil produced.

H. *H_2S Drilling Operations Plan* means a written plan which provides for safety of essential personnel and for maintaining control of the well with regard to H_2S and SO_2.

I. *Lessee* means a person or entity holding record title in a lease issued by the United States (3160.0–5).

J. *Major violation* means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (3160.0–5).

K. *Minor violation* means noncompliance which does not rise to the level of a major violation (3160.0–5).

L. *Oil well* means a well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, including the entrained liquid hydrocarbons.

M. *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee may also be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title (3160.0–5).

N. *Operator* means any person or entity including but not limited to the lessee or operating rights owner who has stated in writing to the authorized officer that he/she is responsible under the terms of the lease for the operations conducted on the leased lands or a portion thereof (3160.0–5).

O. *Potentially hazardous volume* means a volume of gas of such H_2S concentration and flow rate that it may result in radius of exposure-calculated ambient concentrations of 100 ppm H_2S at any occupied residence, school, church, park, school bus stop, place of business or other area where the public could reasonably to expected to frequent, or 500 ppm H_2S at any Federal, State, County or municipal road or highway.

P. *Production facilities* means any wellhead, flowline, piping, treating, or separating equipment, water disposal pits, processing plant or combination thereof prior to the approved measurement point for any lease, communitization agreement, or unit participating area.

Q. *Prompt correction* means immediate correction of violations, with operation suspended if required at the discretion of the authorized officer.

R. *Public Protection Plan* means a written plan which provides for the safety of the potentially affected public with regard to H_2S and SO_2.

S. *Radius of exposure* means the calculation resulting from using the following Pasquill-Gifford derived equation, or by such other method(s) as may be approved by the authorized officer:

1. For determining the 100 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

$$X=[1.589)(H_2S \text{ concentration})(Q)]^{(0.625)}$$

or

2. For determining the 500 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

$$X=[(0.4546)(H_2S \text{ concentration})(Q)]^{(0.6258)}$$

where:

X=radius of exposure in feet;

H_2S Concentration=decimal equivalent of the mole or volume fractions (percent) of H_2S in the gaseous mixture;

Q=maximum volume of gas determined to be available for escape in cubic feet per day (at standard conditions of 14.73 psia and 60°F).

3. For determining the 100 ppm or the 500 ppm radius of exposure in gas streams containing H_2S concentrations of 10 percent or greater, a dispersion technique that takes into account representative wind speed, direction, atmospheric stability, complex terrain, other dispersion features shall be utilized. Such techniques may include, but shall not be limited to one of a series of computer models outlined in The Environmental Protection Agency's "Guidelines on Air Quality Models—(EPA–450/2–78–027R)."

4. Where multiple H_2S sources (i.e., wells, treatment equipment, flowlines, etc.) are present, the operator may elect to utilize a radius of exposure which covers a larger area than would be calculated using radius of exposure formula for each component part of the drilling/completion/workover/production system.

5. For a well being drilled in an area where insufficient data exists to calculate a radius of exposure, but where H_2S could reasonably be expected to be present in concentrations in excess of 100 ppm in the gas stream, a 100 ppm radius of exposure equal to 3,000 feet shall be assumed.

T. *Zones known to contain H_2S* means geological formations in a field where prior drilling, logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that contain 100 ppm or more of H_2S in the gas stream.

U. *Zones known not to contain H_2S* means geological formations in a field where prior drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S-bearing zones that contain 100 ppm or more of H_2S in the gas stream.

V. *Zones which can reasonably be expected to contain H_2S* means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is a potential for 100 ppm or more of H_2S in the gas stream.

W. *Zones which cannot reasonably be expected to contain H_2S* means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is not a potential for 100 ppm or more of H_2S in the gas stream.

III. Requirements

The requirements of this Order are the minimum acceptable standards with regard to H_2S operations. This Order also classifies violations as major or minor for purposes of the assessment and penalty provisions of 43 CFR part 3163, specifies the corrective action which will probably be required, and establishes the normal abatement period following detection of a major or minor violation in which the violator may take such corrective action without incurring an assessment. However, the authorized officer may, after consideration of all appropriate factors, require reasonable and necessary standards, corrective actions and abatement periods that may in some cases, vary from those specified in this Order that he/she determines to be necessary to protect public health and safety, the environment, or to maintain control of a well to prevent waste of Federal mineral resources. To the extent such standards, actions or abatement periods differ from those set forth in this Order, they may be subject to review pursuant to 43 CFR 3165.3.

A. Applications, Approvals, and Reports

1. Drilling

For proposed drilling operations where formations will be penetrated which have zones known to contain or which could reasonably be expected to contain concentrations of H_2S of 100 ppm or more in the gas stream, H_2S Drilling Operation Plan and if the applicability criteria in section III.B.1 are met, a Public Protection Plan as outlined in section III.B.2.b, shall be submitted as part of the Application for Permit to Drill (APD) (refer to Oil and Gas Order No. 1). In cases where multiple filings are being made with a single drilling plan, a single H_2S Drilling Operations Plan and, if applicable, a single Public Protection Plan may be submitted for the lease, communitization agreement, unit or field in accordance with Order No. 1. Failure to submit either the H_2S Drilling Operations Plan or the Public Protection Plan when required by this Order shall result in an incomplete APD pursuant to 43 CFR 3162.3–1.

The H_2S Drilling Operations Plan shall fully describe the manner in which the requirements and minimum standards in section III.C, shall be met and implemented. As required by this Order (section III.C.), the following must be submitted in the H_2S Drilling Operations Plan:

a. Statement that all personnel shall receive proper H_2S training in accordance with section III.C.3.a.

b. A legible well site diagram of accurate scale (may be included as part of the Well Site Layout as required by Onshore Order No. 1) showing the following:

i. Drill rig orientation

ii. Prevailing wind direction

iii. Terrain of surrounding area

iv. Location of all briefing areas (designate primary briefing area)

v. Location of access road(s) (including secondary egress)

vi. Location of flare line(s) and pit(s)

vii. Location of caution and/or danger signs

viii. Location of wind direction indicators

c. As required by this Order, a complete description of the following H_2S safety equipment/systems:

i. Well control equipment.

—Flare line(s) and means of ignition
—Remote controlled choke
—Flare gun/flares
—Mud-gas separator and rotating head (if exploratory well)

ii. Protective equipment for essential personnel.

—Location, type, storage and maintenance of all working and escape breathing apparatus
—Means of communication when using protective breathing apparatus

iii. H_2S detection and monitoring equipment.

—H_2S sensors and associated audible/visual alarm(s)
—Portable H_2S and SO_2 monitor(s)

iv. Visual warning systems.

—Wind direction indicators
—Caution/danger sign(s) and flag(s)

v. Mud program.

—Mud system and additives
—Mud degassing system

vi. Metallurgy.

—Metallurgical properties of all tubular goods and well control equipment which could be exposed to H_2S (section III.C.4.c.)

vii. Means of communication from wellsite.

d. Plans for well testing.

2. Production

a. For each existing production facility having an H_2S concentration of 100 ppm or more in the gas stream, the operator shall calculate and submit the calculations to the authorized officer within 180 days of the effective date of this Order, the 100 and, if applicable, the 500 ppm radii of exposure for all facilities to determine if the applicability criteria section III.B.1. of this order are met. Radii of exposure calculations shall not be required for oil or water flowlines. Further, if any of the applicability criteria (section III.B.1.) are met, the operator shall submit a complete Public Protection Plan which meets the requirements of section III.B.2.b. to the authorized officer within 1 year of the effective date of this Order. For production facilities constructed after the effective date of this Order and meeting the above minimum concentration (100 ppm in gas stream), the operator shall report the radii of exposure calculations, and if the applicability criteria (section III.B.1) are met, submit a complete Public Protection Plan (section III.B.2.b.) to the authorized officer within 60 days after completion of production facilities.

Violation: Minor for failure to submit required information.

Corrective Action: Submit required information (radii of exposure and/or complete Public Protection Plan).

Normal Abatement Period: 20 to 40 days.

b. The operator shall initially test the H_2S concentration of the gas stream for each well or production facility and shall make the results available to the authorized officer, upon request.

Violation: Minor.

Corrective Action: Test gas from well or production facility.

Normal Abatement Period: 20 to 40 days.

c. If operational or production alterations result in a 5% or more increase in the H_2S concentration (i.e., well recompletion, increased GOR's) or the radius of exposure as calculated under sections III.A.2.a. and III.A.2.b., notification of such changes shall be submitted to the authorized officer within 60 days after identification of the change.

Violation: Minor.

Corrective Action: Submit information to authorized officer.

Normal Abatement Period: 20 to 40 days.

3. Plans and Reports

a. H_2S Drilling Operations Plan(s) or Public Protection Plan(s) shall be reviewed by the operator on an annual basis and a copy of any necessary revisions shall be submitted to the authorized officer upon request.

Violation: Minor.

Corrective Action: Submit information to authorized officer.

Normal Abatement Period: 20 to 40 days.

b. Any release of a potentially hazardous volume of H_2S shall be reported to the authorized officer as soon as practicable, but no later than 24 hours following identification of the release.

Violation: Minor.

Corrective Action: Report undesirable event to the authorized officer.

Normal Abatement Period: 24 hours.

B. Public Protection

1. Applicability Criteria

For both drilling/completion/workover and production operations, the H_2S radius of exposure shall be determined on all wells and production facilities subject to this Order. A Public Protection Plan (Section III.B.2) shall be required when any of the following conditions apply:

a. The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent;

b. The 500 ppm radius of exposure is greater than 50 feet and includes any part of a Federal, State, County, or municipal road or highway owned and principally maintained for public use; or

c. The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are maintained for direct public access.

Additional specific requirements for drilling/completion/workover or producing operations are described in sections III.C. and III.D. of this Order, respectively.

2. Public Protection Plan

a. Plan Submission/Implementation/Availability—i. A Public Protection Plan providing details of actions to alert and protect the public in the event of a release of a potentially hazardous volume of H_2S shall be submitted to the authorized officer as required by Section III.A.1. for drilling or by section III.A.2.a. for producing operations when the applicability criteria established in section III.B.1. of this Order are met. One plan may be submitted for each well, lease, communitization agreement, unit, or field, at the operator's discretion. The Public Protection Plan shall be maintained and updated, in accordance with section III.A.3.a.

ii. The Public Protection Plan shall be activated immediately upon detection of release of a potentially hazardous volume of H_2S.

Violation: Major.

Corrective Action: Immediate implementation of the public protection plan.

Normal Abatement Period: Prompt correction required.

iii. A copy of the Public Protection Plan shall be available at the drilling/completion site for such wells and at the facility, field office, or with the pumper, as appropriate, for producing wells, facilities, and during workover operations.

Violation: Minor.

Corrective Action: Make copy of Plan available.

Normal Abatement Period: 24 hours (drilling/completion/workover), 5 to 7 days (production).

b. Plan Content. i. The details of the Public Protection Plan may vary according to the site specific characteristics (concentration, volume, terrain, etc.) expected to be encountered and the number and proximity of the population potentially at risk. In the areas of high population density or in other special cases, the authorized officer may require more stringent plans to be developed. These may include public education seminars, mass alert systems, and use of sirens, telephone, radio, and television depending on the number of people at risk and their location with respect to the well site.

ii. The Public Protection Plan shall include:

(a) The responsibilities and duties of key personnel, and instructions for alerting the public and requesting assistance;

(b) A list of names and telephone numbers of residents, those responsible for safety of public roadways, and individuals responsible for the safety of occupants of buildings within the 100 ppm radius of exposure (e.g. school principals, building managers, etc.) as defined by the applicability criteria in section III.B.1. The operator shall ensure that those who are at the greatest risk are notified first. The plan shall define when and how people are to be notified in case of an H_2S emergency.

(c) A telephone call list (including telephone numbers) for requesting assistance from law enforcement, fire department, and medical personnel and Federal and State regulatory agencies, as required. Necessary information to be communicated and the emergency responses that may be required shall be listed. This information shall be based on previous contacts with these organizations;

(d) A legible 100 ppm (or 3,000 feet, if conditions unknown) radius plat of all private and public dwellings, schools, roads, recreational areas, and other areas where the public might reasonably be expected to frequent;

(e) Advance briefings, by visit, meeting or letter to the people identified in section III.B.2.b.ii(b), including:

—Hazards of H_2S and SO_2;
—Necessity for an emergency action plan;
—Possible sources of H_2S and SO_2;
—Instructions for reporting a leak to the operator;
—The manner in which the public shall be notified of an emergency; and
—Steps to be taken in case of an emergency, including evacuation of any people;

(f) Guidelines for the ignition of the H_2S-bearing gas. The Plan shall designate the title or position of the person(s) who has the authority to ignite the escaping gas and define when, how, and by whom the gas is to be ignited;

(g) Additional measures necessary following the release of H_2S and SO_2 until the release is contained are as follows:

—Monitoring of H_2S and SO_2 levels and wind direction in the affected area;
—Maintenance of site security and access control;
—Communication of status of well control; and
—Other necessary measures as required by the authorized officer; and

(h) For production facilities, a description of the detection system(s) utilized to determine the concentration of H_2S released.

C. Drilling/Completion/Workover Requirements

1. General

a. A copy of the H_2S Drilling Operations Plan shall be available during operations at the well site beginning when the operation is subject to the terms of this Order (i.e., 3 days or 500 feet of known or probable H_2S zone).

Violation: Minor.

Corrective Action: Make copy of Plan available.

Normal Abatement Period: 24 hours.

b. Initial H_2S training shall be completed and all H_2S related safety equipment shall be installed, tested, and operational when drilling reaches a depth of 500 feet above, or 3 days prior to penetrating (whichever comes first) the first zone containing or reasonably expected to contain H_2S. A specific H_2S operations plan for completion and workover operations will not be required for approval. For completion and workover operations, all required equipment and warning systems shall be operational and training completed prior to commencing operations.

Violation: Major.

Corrective Action: Implement H_2S operational requirements, such as completion of training and/or installation, repair, or replacement of equipment, as necessary.

Normal Abatement Period: Prompt correction required.

c. If H_2S was not anticipated at the time the APD was approved, but is encountered in excess of 100 ppm in the gas stream, the following measures shall be taken:

(i) the operator shall immediately ensure control of the well, suspend drilling ahead operations (unless detrimental to well control), and obtain materials and safety equipment to bring the operations into compliance with the applicable provisions of this Order.

Violation: Major.

Corrective Action: Implement H_2S operational requirements, as applicable.

Normal Abatement Period: Prompt correction required.

ii. The operator shall notify the authorized officer of the event and the mitigating steps that have or are being taken as soon as possible, but no later than the next business day. If said notification is subsequent to actual resumption of drilling operations, the operator shall notify the authorized officer of the date that drilling was

resumed no later than the next business day.

Violation: Minor.

Corrective Action: Notify authorized officer.

Normal Abatement Period: 24 hours.

iii. It is the operator's responsibility to ensure that the applicable requirements of this Order have been met prior to the resumption of drilling ahead operations. Drilling ahead operations will not be suspended pending receipt of a written H_2S Drilling Operations Plan(s) and, if necessary, Public Protection Plan(s) provided that complete copies of the applicable Plan(s) are filed with the authorized officer for approval within 5 business days following resumption of drilling ahead operations.

Violation: Minor.

Corrective Action: Submit plans to authorization officer.

Normal Abatement Period: 5 days.

2. Locations.

a. Where practical, 2 roads shall be established, 1 at each end of the location, or as dictated by prevailing winds and terrain. If an alternate road is not practical, a clearly marked footpath shall be provided to a safe area. The purpose of such an alternate escape route is only to provide a means of egress to a safe area.

Violation: Minor.

Corrective Action: Designate or establish an alternate escape route.

Normal Abatement Period: 24 hours.

b. The alternate escape route shall be kept passable at all times.

Violation: Minor.

Corrective Action: Make alternate escape route passable.

Normal Abatement Period: 24 hours.

c. For workovers, a secondary means of egress shall be designated.

Violation: Minor.

Corrective Action: Designate secondary means of egress.

Normal Abatement Period: 24 hours.

3. Personnel Protection

a. Training Program. The operator shall ensure that all personnel who will be working at the wellsite will be properly trained in H_2S drilling and contingency procedures in accordance with the general training requirements outlined in the American Petroleum Institute's (API) *Recommended Practice (RP) 49 (April 15, 1987 or subsequent editions) for Safe Drilling of Wells Containing Hydrogen Sulfide, Section 2.* The operator also shall ensure that the training will be accomplished prior to a well coming under the terms of this Order (i.e., 3 days or 500 feet of known or probable H_2S zone). In addition to the requirements of API–RP49, a minimum of an initial training session and weekly H_2S and well control drills for all personnel in each working crew shall be conducted. The initial training session for each well shall include a review of the site specific Drilling Operations Plan and, if applicable, the Public Protection Plan.

Violation: Major.

Corrective Action: Train all personnel and conduct drills.

Normal Abatement Period: Prompt correction required.

i. All training sessions and drills shall be recorded on the driller's log or its equivalent.

Violation: Minor.

Corrective Action: Record on driller's log or equivalent.

Normal Abatement Period: 24 hours.

ii. For drilling/completion/workover wells, at least 2 briefing areas shall be designated for assembly of personnel during emergency conditions, located a minimum of 150 feet from the well bore and 1 of the briefing areas shall be upwind of the well at all times. The briefing area located most normally upwind shall be designated as the "Primary Briefing Area."

Violation: Major.

Corrective Action: Designate briefing areas.

Normal Abatement Period: 24 hours.

iii. One person (by job title) shall be designated and identified to all on-site personnel as the person primarily responsible for the overall operation of the on-site safety and training programs.

Violation: Minor.

Corrective Action: Designate safety responsibilities.

Normal Abatement Period: 24 hours.

b. Protective Equipment: i. The operator shall ensure that proper respirator protection equipment program is implemented, in accordance with the current American National Standards Institute (ANSI) Standard Z.88.2–1980 *"Practices for Respiratory Protection."* Proper protective breathing apparatus shall be readily accessible to all essential personnel on a drilling/completion/workover site. Escape and pressure-demand type working equipment shall be provided for essential personnel in the H_2S environment to maintain or regain control of the well. For pressure-demand type working equipment those essential personnel shall be able to obtain a continuous seal to the face with the equipment. The operator shall ensure that service companies have the proper respiratory protection equipment when called to the location. Lightweight, escape-type, self-contained breathing apparatus with a minimum of 5-minute rated supply shall be readily accessible at a location for the derrickman and at any other location(s) where escape from an H_2S contaminated atmosphere would be difficult.

Violation: Major.

Corrective Action: Acquire, repair, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

ii. Storage and maintenance of protective breathing apparatus shall be planned to ensure that at least 1 working apparatus per person is readily available for all essential personnel.

Violation: Major.

Corrective Action: Acquire or rearrange equipment, as necessary.

Normal Abatement Period: Prompt correction required.

iii. The following additional safety equipment shall be available for use:

(a) Effective means of communication when using protective breathing apparatus;

(b) Flare gun and flares to ignite the well;

(c) Telephone, radio, mobile phone, or any other device that provides communication from a safe area at the rig location, where practical.

Violation: Major.

Corrective Action: Acquire, repair, or replace equipment.

Normal Abatement Period: 24 hours.

c. H_2S Detection and Monitoring Equipment. i. Each drilling/completion site shall have an H_2S detection and monitoring system that automatically activates visible and audible alarms when the ambient air concentration H_2S reaches the threshold limits of 10 and 15 ppm in air, respectively. The sensors shall have a rapid response time and be capable of sensing a minimum of 10 ppm of H_2S in ambient air, with at least 3 sensing points located at the shale shaker, rig floor, and bell nipple for a drilling site and the cellar, rig floor, and circulating tanks or shale shaker for a completion site. The detection system shall be installed, calibrated, tested, and maintained in accordance with the manufacturer's recommendations.

Violation: Major.

Corrective Action: Install, repair, calibrate, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

ii. All tests of the H_2S monitoring system shall be recorded on the driller's log or its equivalent.

Violation: Minor.

Corrective Action: Record on driller's log or equivalent.

Normal Abatement Period: 24 hours.

iii. For workover operations, 1 operational sensing point shall be

located as close to the wellbore as practical. Additional sensing points may be necessary for large and/or long-term operations.

Violation: Major.

Corrective Action: Install, repair, calibrate, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

d. Visible Warning System. i. Equipment to indicate wind direction at all times shall be installed at prominent locations and shall be visible at all times during drilling operations. At least 2 such wind direction indicators (i.e., windsocks, windvanes, pennants with tailstreamers, etc.) shall be located at separate elevations (i.e., near ground level, rig floor, and/or treetop height). At least 1 wind direction indicator shall be clearly visible from all principal working areas at all times so that wind direction can be easily determined. For completion/workover operations, 1 wind direction indicator shall suffice, provided it is visible from all principal working areas on the location. In addition, a wind direction indicator at each of the 2 briefing areas shall be provided if the wind direction indicator(s) previously required in this paragraph are not visible from the briefing areas.

Violation: Minor.

Corrective Action: Install, repair, move, or replace wind direction indicator(s), as necessary.

Normal Abatement Period: 24 hours.

ii. At any time when the terms of this Order are in effect, operational danger or caution sign(s) shall be displayed along all controlled accesses to the site.

Violation: Minor.

Corrective Action: Erect appropriate signs.

Normal Abatement Period: 24 hours.

iii. Each sign shall be painted a high-visibility red, black and white, or yellow with black lettering.

Violation: Minor.

Corrective Action: Replace or alter sign, as necessary.

Normal Abatement Period: 5 to 20 days.

iv. The sign(s) shall be legible and large enough to be read by all persons entering the well site and be placed a minimum of 200 feet but no more than 500 feet from the well site which allows vehicles to turn around at a safe distance prior to reaching the site.

Violation: Major.

Corrective Action: Replace, alter, or erect sign, as necessary.

Normal Abatement Period: 24 hours.

v. The sign(s) shall read:

DANGER—POISON GAS—
HYDROGEN SULFIDE

and in smaller lettering:

Do Not Approach If Red Flag is Flying

or equivalent language if approved by the authorized officer.

Where appropriate, bilingual or multilingual danger sign(s) shall be used.

Violation: Minor.

Corrective Action: Alter sign(s) as necessary.

Normal Abatement Period: 5 to 20 days.

vi. All sign(s) and, when appropriate, flag(s) shall be visible to all personnel approaching the location under normal lighting and weather conditions.

Violation: Major.

Corrective Action: Erect or move sign(s) and/or flag(s), as necessary.

Normal Abatement Period: 24 hours.

vii. When H_2S is detected in excess of 10 ppm at any detection point, red flag(s) shall be displayed.

Violation: Major.

Corrective Action: Display red flag.

Normal Abatement Period: Prompt correction required.

e. *Warning System Response.* When H_2S is detected in excess of 10 ppm at any detection point, all non-essential personnel shall be moved to a safe area and essential personnel (i.e., those necessary to maintain control of the well) shall wear pressure-demand type protective breathing apparatus. Once accomplished, operations may proceed.

Violation: Major.

Corrective Action: Move non-essential personnel to safe area and mask-up essential personnel.

Normal Abatement Period: Prompt correction required.

4. Operating Procedures and Equipment

a. *General/Operations.* Drilling/completion/workover operations in H_2S areas shall be subject to the following requirements:

i. If zones containing in excess of 100 ppm of H_2S gas are encountered while drilling with air, gas, mist, other non-mud circulating mediums or aerated mud, the well shall be killed with a water or oil-based mud and mud shall be used thereafter as the circulating medium for continued drilling.

Violation: Major.

Corrective Action: Convert to appropriate fluid medium.

Normal Abatement Period: Prompt correction required.

ii. A flare system shall be designed and installed to safely gather and burn H_2S-bearing gas.

Violation: Major.

Corrective Action: Install flare system.

Normal Abatement Period: Prompt correction required.

iii. Flare lines shall be located as far from the operating site as feasible and in a manner to compensate for wind changes. The flare line(s) mouth(s) shall be located not less than 150 feet from the wellbore unless otherwise approved by the authorized officer. Flare lines shall be straight unless targeted with running tees.

Violation: Minor.

Corrective Action: Adjust flare line(s) as necessary.

Normal Abatement Period: 24 hours.

iv. The flare system shall be equipped with a suitable and safe means of ignition.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 24 hours.

v. Where noncombustible gas is to be flared, the system shall be provided supplemental fuel to maintain ignition.

Violation: Major.

Corrective Action: Acquire supplemental fuel.

Normal Abatement Period: 24 hours.

vi. At any wellsite where SO_2 may be released as a result of flaring of H_2S during drilling, completion, or workover operations, the operator shall make SO_2 portable detection equipment available for checking the SO_2 level in the flare impact area.

Violation: Minor.

Corrective Action: Acquire, repair, or replace equipment as necessary.

Normal Abatement Period: 24 hours to 3 days.

vii. If the flare impact area reaches a sustained ambient threshold level of 2 ppm or greater of SO_2 in air and includes any occupied residence, school, church, park, or place of business, or other area where the public could reasonably be expected to frequent, the Public Protection Plan shall be implemented.

Violation: Major.

Corrective Action: Contain SO_2 release and/or implement Public Protection Plan.

Normal Abatement Period: Prompt correction required.

viii. A remote controlled choke shall be installed for all H_2S drilling and, where feasible, for completion operations. A remote controlled valve may be used in lieu of this requirement for completion operations.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

ix. Mud-gas separators and rotating heads shall be installed and operable for all exploratory wells.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

b. Mud Program. i. A pH of 10 or above in a fresh water-base mud system shall be maintained to control corrosion, H_2S gas returns to surface, and minimize sulfide stress cracking and embrittlement unless other formation conditions or mud types justify a lesser pH level.

Violation: Major.

Corrective Action: Adjust pH.

Normal Abatement Period: Prompt correction required.

ii. Drilling mud containing H_2S gas shall be degassed in accordance with API's RP–49, § 5.14, at an optimum location for the rig configuration. These gases shall be piped into the flare system.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 24 hours.

iii. Sufficient quantities of mud additives shall be maintained on location to scavenge and/or neutralize H_2S where formation pressures are unknown.

Violation: Major.

Corrective Action: Obtain proper mud additives.

Normal Abatement Period: 24 hours.

c. *Metallurgical Equipment.* All equipment that has the potential to be exposed to H_2S shall be suitable for H_2S service. Equipment which shall meet these metallurgical standards include the drill string, casing, wellhead, blowout preventer assembly, casing head and spool, rotating head, kill lines, choke, choke manifold and lines, valves, mud-gas separators, drill-stem test tools, test units, tubing, flanges, and other related equipment.

To minimize stress corrosion cracking and/or H_2S embrittlement, the equipment shall be constructed of material whose metallurgical properties are chosen with consideration for both an H_2S working environment and the anticipated stress. The metallurgical properties of the materials used shall conform to the current National Association of Corrosion Engineers (NACE) Standard MR–01–75, *Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment.* These metallurgical properties include the grade of steel, the processing method (rolled, normalized, tempered, and/or quenched), and the resulting strength properties. The working environment considerations include the H_2S concentration, the well fluid pH, and the wellbore pressures and temperatures. Elastomers, packing, and similar inner parts exposed to H_2S shall be resistant at the maximum anticipated temperature of exposure. The manufacturer's verification of design for use in an H_2S environment shall be sufficient verification of suitable service in accordance with this Order.

Violation: Major.

Corrective Action: Install, repair, or replace appropriate equipment, as necessary.

Normal Abatement Period: Prompt correction required.

d. Well Testing in an H_2S Environment. Testing shall be performed with a minimum number of personnel in the immediate vicinity which are necessary to safely and adequately operate the test equipment. Except with prior approval by the authorized officer, the drill-stem testing of H_2S zones shall be conducted only during daylight hours and formation fluids shall not be flowed to the surface (closed chamber only).

Violation: Major

Corrective Action: Terminate the well test.

Normal Abatement Period: Prompt correction required.

D. Production Requirements

1. General

a. All existing production facilities which do not currently meet the requirements and minimum standards set forth in this section shall be brought into conformance within 1 year after the effective date of this Order. All existing equipment that is in a safe working condition as of the effective date of this Order is specifically exempt from the metallurgical requirements prescribed in section III D.3.g.

Violation: Minor.

Corrective Action: Bring facility into compliance.

Normal Abatement Period: 60 days.

b. Production facilities constructed after the effective date of this Order shall be designed, constructed, and operated to meet the requirements and minimum standards set forth in this section. Any variations from the standards or established time frames shall be approved by the authorized officer in accordance with the provisions of section IV, of this Order. Except for storage tanks, a determination of the radius of exposure for all production facilities shall be made in the manner prescribed in section II. S. of this Order.

Violation: Minor.

Corrective Action: Bring facility into compliance.

Normal Abatement Period: 60 days.

c. At any production facility or storage tank(s) where the sustained ambient H_2S concentration is in excess of 10 ppm at 50 feet from the production facility or storage tank(s) as measured at ground level under calm (1 mph) conditions, the operator shall collect or reduce vapors from the system and they shall be sold, beneficially used, reinjected, or flared provided terrain and conditions permit.

Violation: Major, if a health or safety problem to the public is imminent, otherwise minor.

Corrective Action: Bring facility into compliance.

Normal Abatement Period: 3 days for major, 30 days for minor.

2. Storage Tanks.

Storage tanks containing produced fluids and utilized as part of a production operation and operated at or near atmospheric pressure, where the vapor accumulation has an H_2S concentration in excess of 500 ppm in the tank, shall be subject to the following:

a. No determination of a radius of exposure need be made for storage tanks.

b. All stairs/ladders leading to the top of storage tanks shall be chained and/or marked to restrict entry. For any storage tank(s) which require fencing (Section III.D.2.f), a danger sign posted at the gate(s) shall suffice in lieu of this requirement.

Violation: Minor.

Corrective Action: Chain or mark stair(s)/ladder(s) or post sign, as necessary.

Normal Abatement Period: 5 to 20 days.

c. A danger sign shall be posted on or within 50 feet of the storage tank(s) to alert the public of the potential H_2S danger. For any storage tank(s) which require fencing (section III.D.2.f.), a danger sign posted at the locked gate(s) shall suffice in lieu of this requirement.

Violation: Minor.

Corrective Action: Post or move sign(s), as necessary.

Normal Abatement Period: 5 to 20 days.

d. The sign(s) shall be painted in high-visibility red, black, and white. The sign(s) shall read:

DANGER—POISON GAS-HYDROGEN SULFIDE

or equivalent language if approved by the authorized officer. Where

appropriate, bilingual or multilingual warning signs shall be used.

Violation: Minor.

Corrective Action: Post, move, replace, or alter sign(s), as necessary.

Normal Abatement Period: 20 to 40 days.

e. At least 1 permanent wind direction indicator shall be installed so that wind direction can be easily determined at or approaching the storage tank(s).

Violation: Minor.

Corrective Action: Install, repair, or replace wind direction indicator, as necessary.

Normal Abatement Period: 20 to 40 days.

f. A minimum 5-foot chain-link, 5-strand barbed wire, or comparable type fence and gate(s) that restrict(s) public access shall be required when storage tanks are located within ¼ mile of or contained inside a city or incorporated limits of a town or within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or where the public could reasonably he expected to frequent.

Violation: Minor.

Corrective Action: Install, repair, or replace fence and/or gate(s), as necessary.

Normal Abatement Period: 20 to 40 days.

g. Gate(s), as required by section III.D.2.f. shall be locked when unattended by the operator.

Violation: Minor.

Corrective Action: Lock gate.

Normal Abatement Period: 24 hours.

3. Production Facilities

Production facilities containing 100 ppm or more of H_2S in the gas stream shall be subject to the following:

a. Danger signs as specified in section III.D.2.d. of this Order shall be posted on or within 50 feet of each production facility to alert the public of the potential H_2S danger. In the event the storage tanks and production facilities are located at the same site. 1 such danger sign shall suffice. Further, for any facilities which require fencing (section III.D.2.f.), 1 such danger sign at the gate(s) shall suffice in lieu of this requirement.

Violation: Minor.

Corrective Action: Post, move, or alter sign(s), as necessary.

Normal Abatement Period: 5 to 20 days.

b. Danger signs, as specified in section III.D.2.d. of this Order, shall be required for well flowlines and lease gathering lines that carry H_2S gas. Placement shall be where said lines cross public or lease roads. The signs shall be legible and shall contain sufficient additional information to permit a determination of the owner of the line.

Violation: Minor.

Corrective Action: Post, move, or alter sign(s), as necessary.

Normal Abatement Period: 5 to 20 days.

c. Fencing, as specified in section III.D.2.f., shall be required when production facilities are located within ¼ mile of or contained inside a city or incorporated limits of a town or within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or any other area where the public could reasonably be expected to frequent. Flowlines are exempted from this additional fencing requirement.

Violation: Minor.

Corrective Action: Install, repair, or replace fence, and/or gate(s), as necessary.

Normal Abatement Period: 20 to 40 days.

d. Gate(s), as required by section III.D.3.c. shall be locked when unattended by the operator.

Violation: Minor.

Corrective Action: Lock gate.

Normal Abatement Period: 24 hours.

e. Wind direction indicator(s) as specified in section III.D.2.e. of this Order shall be required. In the event the storage tanks and production facilities are located at the same site, 1 such indicator shall suffice. Flowlines are exempt from this requirement.

Violation: Minor.

Corrective Action: Install, repair, or replace wind direction indicator(s), as necessary.

Normal Abatement Period: 20 to 40 days.

f. All wells, unless produced by artificial lift, shall possess a secondary means of immediate well control through the use of appropriate christmas tree and/or downhole completion equipment. Such equipment shall allow downhole accessibility (reentry) under pressure for permanent well control operations. If the applicability criteria stated in Section III.B.1. of this Order are met, a minimum of 2 master valves shall be installed.

Violation: Minor.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 20 to 40 days.

g. All equipment shall be chosen with consideration for both a H_2S working environment and anticipated stresses. NACE Standard MR–01–75 shall be used for metallic equipment selection and, if applicable, adequate protection by chemical inhibition or other such method that controls or limits the corrosive effects of H_2S shall be used.

Violation: Minor.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 20 to 40 days.

h. Where the 100 ppm radius of exposure for H_2S includes any occupied residence, place of business, school, or other inhabited structure or any area where the public may reasonably be expected to frequent, the operator shall install automatic safety valves or shutdowns at the wellhead, or other appropriate shut-in controls for wells equipped with artificial lift.

Violation: Minor.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 20 to 40 days.

i. The automatic safety valves or shutdowns, as required by section III.D.3.h. shall be set to activate upon a release of a potentially hazardous volume of H_2S.

Violation: Major.

Corrective Action: Repair, replace or adjust equipment, as necessary.

Normal Abatement Period: Prompt correction required.

j. If the sustained ambient concentration of H_2S or SO_2 from a production facility which is venting or flaring reaches a concentration of H_2S (10ppm) or SO_2 (2ppm), respectively, at any of the following locations, the operator shall modify the production facility as approved by the authorized officer. The locations include any occupied residence, school, church, park, playground, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent.

Violation: Major.

Corrective Action: Repair facility to bring into compliance.

Normal Abatement Period: Prompt correction required.

4. Public Protection.

When conditions as defined in section III.B.1. of this Order exist, a Public Protection Plan for producing operations shall be submitted to the authorized officer in accordance with section III.B.2.a. of this Order which includes the provisions of section III.B.2.b.

Violation: Minor.

Corrective Action: Submit Public Protection Plan.

Normal Abatement Period: 20 to 40 days.

IV. Variances from Requirements

An operator may request the authorized officer to approve a variance from any of the requirements prescribed in section III hereof. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related requirement(s) of minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, may approve the requested variance(s) if it is determined that the proposed alternative(s) meets or exceeds the objectives of the applicable requirement(s) or minimum standard(s).

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BILLING CODE 4310-84-M

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personally delivered. If the delivery is accomplished by mail, the date of receipt shall be the date noted on the return receipt card.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-350 Filed 1-8-91; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[AA-250-00-4370-02; Circular No. 2631]

RIN 1004-AB81

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Prohibited Acts, Administrative Remedies, and Penalties; Administrative Remedies

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule allows the authorized officer to place in full force and effect decisions to cancel a Private Maintenance and Care Agreement (PMACA) in situations where wild horses or burros subject to such an agreement are found to be abused or mistreated.

DATE: *Effective date:* January 9, 1991. Comments on the interim final rule should be received on or before March 11, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, room 5555, 1849 C St. NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the Bureau of Land Management (250), Premier Building, room 901, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240: Telephone (202) 653-9215.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 4770.3, "Any person who is adversely affected by a decision of the authorized officer * * * may file an appeal * * * " Under the regulations of the Bureau of Land Management (BLM) implementing the Administrative Procedure Act, most appealed decisions are stayed pending resolution of the appeal by the Interior Board of Land Appeals (IBLA). The existing rules delay wild horse and burro repossession decisions for up to 2 years pending the IBLA rulings.

The present regulations provide no means for immediate cancellation of a PMACA and repossession of adopted animals when an adopter's abuse or negligence threatens the welfare of a wild horse or burro. The BLM continues to have several cases every year that require immediate removal of an animal from an adopter to prevent severe or long-term damage to the animal's health. The health and welfare of these animals will be benefitted by implementation of this rule upon publication.

The principal author of this interim final rule is Vernon R. Schulze, wild horse and burro program specialist, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. However, an additional paragraph has been added to the Note at the beginning of Group 4700 describing the information collection burden imposed by other regulations in the Group, as required by the Departmental Manual of the Department of the Interior. This Note has no relation to the substantive provisions of this rule.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for part 4700 continues to read as follows:

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331-1340), Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315).

2. The Note at the beginning of Group 4700 is amended by adding a new paragraph at the end thereof to read as follows:

* * * * *

Public reporting burden for this information is estimated to average 0.165 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information Collection Clearance Officer, Division of Information Resources Management, Bureau of Land Management (770), 1849 C Street NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project 1004-0042, Washington, DC 20503.

3. Section 4770.3 is revised to read as follows:

§ 4770.3 Administrative remedies.

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4, subpart E.

(b) The authorized officer may place in full force and effect decisions to cancel a Private Maintenance and Care Agreement so as to allow repossession of wild horses or burros from adopters to protect the animals' welfare. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part.

Dated: November 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-438 Filed 1-8-91; 8:45 am]

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#2632

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3190

RIN 1004-AB32

[WO-650-4121-2410-24 1A; Circular No. 2632]

Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections

AGENCY: Bureau of Land Management.

ACTION: Final rule. Providing Procedures for Implementing Certain Provisions of the Federal Oil and Gas Royalty Management Act.

SUMMARY: This final rulemaking establishes administrative procedures for States and Indian tribes to inspect supervised oil and gas leases within the limits of their jurisdictions. These procedures are necessary to implement section 202 of the Federal Oil and Gas Royalty Management Act of 1982.

EFFECTIVE DATE: February 25, 1991.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, Room 601, Premier Building, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Susan Pepperney, (202) 653-2127.

SUPPLEMENTARY INFORMATION: This final rulemaking establishes a new subpart 3192 in part 3190, Group 3100 to implement the authority contained in section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) (30 U.S.C. 1732) relating to the inspection of Federally supervised oil and gas leases by a State or Indian tribe under a cooperative agreement between the Bureau of Land Management and the State or tribe. This is the second rule implementing the authority in FOGRMA that provides for inspection of Federally supervised oil and gas leases by other than Federal employees. The first, published in the **Federal Register** on July 17, 1987 (52 FR 27180), set forth general provisions pertaining to delegation of authority, cooperative agreements, and contracts, and more specific regulations governing delegation of authority. It has been the policy of the Department of the Interior to implement section 205 of FOGRMA first and then to follow with the implementation of section 202. This final rulemaking provides procedures for cooperative agreements under section 202 of the Act. It therefore covers cooperative agreements between the Bureau of Land Management and States and Indian tribes.

The purpose of the inspection is to determine whether there is compliance on oil and gas leases with the requirements of the mineral leasing laws and FOGRMA.

Section 202 of FOGRMA authorizes the Secretary of the Interior to enter into cooperative agreements with States and Indian tribes for the purposes of sharing oil and gas royalty management information, and carrying out inspection, investigation, and certain enforcement activities, including those activities authorized by section 108 of the Act. The Secretary may not enter into cooperative agreements with a State involving Indian lands without permission of the affected Indian tribe.

States and tribes should be aware that the continuation of any cooperative agreement made under this rulemaking will be conditioned upon the availability of the funds for compensation to an entity participating in the program.

The final rulemaking also adds a new § 3190.4 providing that the Bureau of Land Management will make available information needed by States or Indian tribes to carry out activities authorized by cooperative agreements, contracts, or delegation of authority provided for in this part.

The proposed rulemaking was published in the **Federal Register** on November 28, 1988 (53 FR 47904), and requested comments by December 28, 1988. Comments were received from 7 sources: 2 from Federal agencies, 1 from an Indian tribe, 1 from a State government agency, 1 from an oil company, 1 from an industry association, and 1 from an individual. All of the comments were given careful consideration during the preparation of this final rulemaking.

One general comment recommended that the Bureau of Land Management not engage in the practice of entering into cooperative agreements or otherwise delegating its responsibilities for protecting oil and gas resources, stating that the Bureau would be courting problems by involving other agencies and entities that have different priorities and functions than the Bureau does. The comment is not adopted. This final rulemaking implements section 202 of FOGRMA. The rulemaking does not require that the Bureau enter into cooperative agreements; it merely provides administrative procedures so that agreements can be approved.

Two comments suggested that § 3192.1-1(b) be amended to provide that an Indian tribe may only inspect those leases from which the subject tribe receives revenues or, by implication, over which it has jurisdiction. The amendment is not adopted. It is Department policy to permit tribes to include allotted lands under tribal agreements, provide that the tribe has the consent of affected allottees.

Two comments suggested that § 3192.1-3 be amended by adding paragraphs providing that, within 15 days of determining that a proposal for a cooperative agreement is complete, the Bureau of Land Management will notify operators who may be affected by the proposal of a State or tribe. The notification would request comments from the operators. The Bureau of Land Management would be required to consider the comments, and to reject the proposed cooperative agreement if it is provided with documented evidence of abuse of existing inspection or enforcement authority by the subject State or tribe. The amendment is not adopted. There is not statutory requirement that the Bureau of Land Management notify operators of a proposed cooperative agreement. States or tribes should not be penalized for incidents that occurred prior to the proposed agreement. If a State or tribe is found to be abusing the authority it receives as a result of the cooperative agreement, the Bureau will require corrective action or cancellation of the agreement. Operators can appeal the enforcement actions of a State or tribal inspector in the same manner that it does those of a Federal inspector, through the State Director review process.

One comment suggested the § 3192.1-4(b) be amended to provide that cooperative agreements would be effective for a term of from 1 to 5 years, and that agreements could be modified or renewed annually. The suggestion that the agreement term be changed from a maximum of 3 years to a maximum of 5 years is in keeping with Bureau policy for other types of cooperative agreements, and has been adopted in the final rule. The final rule also recognizes modification of the agreement at any time upon consent of both parties.

Two comments suggested that a new paragraph be inserted in § 3192.1-5 requiring the cooperative agreement to include a detailed description of the lands for which authority to inspect is being delegated, and that the reference to confidentiality of proprietary information in proposed paragraph (f) be amended to include a cross-reference to § 3190.1 of this title, which contains the regulations on proprietary data. This cross-reference is useful and the agreement should have a description of the lands to which it applies. The

suggestions are adopted in the final rulemaking.

One comment requested that § 3192.1–7 provide that the cooperative agreement include a detailed description of what constitutes proprietary information, and a provision that confidentiality restrictions would not apply once the proprietary information becomes part of the public record. A definition of proprietary data may be found in § 3190.0–5(f) of this title. It is therefore unnecessary to define proprietary data in each agreement.

Two comments suggested that § 3192.1–7 be amended to provide that the cooperative agreements impose standards on State and tribal inspectors at least as stringent as those the Bureau of Land Management imposes on its own inspectors. The standards referred to in this section of the regulations relate to the overall performance of the State or tribe in carrying out the activities described in the cooperative agreements, including but not limited to, performance of the individual inspectors. Section 3192.4–4 has been amended in response to these and other comments on inspector performance, but no amendment to § 3192.1–7 is necessary.

One comment suggested that § 3192.2–1 be amended to include a requirement that inspectors inspect for compliance with Onshore Oil and Gas Orders as well as Bureau regulations and the mineral leasing laws. The comment has been adopted in the final rulemaking as a clarification.

One comment stated that § 3192.2–1(b) should be amended to allow tribes to require inspections to meet standards that are higher than or different from Federal standards. The comment is not adopted in the final rulemaking. It is important that uniformity be maintained from State to State and tribe to tribe for Federal and Indian leases.

One comment suggested that § 3192.2–1(d) should be amended to add greater emphasis to taking into account tribal priorities, stating that the word "interests" does not sufficiently convey this emphasis. In response to this comment, the word "priorities" has been substituted for " interests" in this provision. Tribal priorities will be taken into account so long as they do not conflict with FOGRMA.

One comment requested clarification as to whether or not § 3192.2–2 includes shut-in authority. Language has been added to this section clarifying that certified State and tribal inspectors have shut-in authority, but are subject to the same level of management review as certified BLM inspectors are under District or Resource Area policy. This section has also been amended in response to a comment discussed under § 3192.3–1.

One comment recommended that § 3192.2–3(c) be removed, stating that determinations of whether losses are avoidable or unavoidable are made by petroleum engineers employed by the Bureau of Land Management, that neither Bureau nor State or Indian inspectors are responsible for making this determination, and that such determinations are not inspection and enforcement functions. The suggestion has been adopted in the final rule, and the paragraph has been removed in the final rule as unnecessary. For purposes of clarification, paragraphs (a) and (b) of § 3192.2–3 have been combined and modified to describe the correct delegation of Secretarial authority for criminal investigations to the Director, BLM, and to remove language appearing to establish rather than merely describe such authority. The final rule still provides that participation of State and Indian inspectors in such investigations shall be as specified in the agreement or at the discretion of the authorized officer.

One comment suggested that § 3192.2–4 be removed entirely, because the regulations already provide that inspections shall be in accordance with the appropriate policies of the State Office, district, and resource area, and argued that oil transporters need not be singled out for special treatment. The comment is not adopted in the final rulemaking. Oil transporter inspections are not covered by the standard inspection checklist employed by Bureau oil and gas inspectors.

One comment asked that § 3192.3–1 be clarified as to whether State and tribal inspectors will be allowed to issue second Notices of Incidents of Noncompliance (INCs) leading to automatic imposition of assessments. Section 3192.2–2(a) has been amended to make it clear that inspectors operating under cooperative agreements have authority only to issue initial INCs. Section 3192.2–2(b) and this section have been amended to make it clear that imposition of assessments and penalties remains the responsibility of the Bureau of Land Management.

One comment suggested that § 3192.4–1(a) should be amended to remove the provision that the authorized officer shall screen a list of nominees submitted by the State or tribe, stating that the Bureau of Land Management should not be responsible for screening nominee inspectors selected by the State or tribe. The comment has been adopted in the final rulemaking. There are no set standards or criteria for selecting inspectors. States and tribes should be able to select their own personnel without Bureau interference. It is the responsibility of the State or tribe to find qualified people for the program.

One comment addressed § 3192.4–4(a) and pointed out that BLM already has standards imposed on its own inspectors, and stated that State and Indian inspectors should be required to meet the same standards. In response to this comment and the two earlier comments on cooperative agreement inspectors meeting the same standards as BLM inspectors, this section has been amended in the final rulemaking to make it clear that State and Indian inspectors shall meet the same standards as are imposed on BLM inspectors.

One comment suggested addressing recent amendments to the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, amended by Pub. L. 100–472) in this rule. This comment was not adopted because this rule applies to States as well as Indian tribes, while that Act pertains only to Indians.

In order to reflect current Departmental policy, the reference to 50 percent funding has been removed from § 3192.1–5(*l*) (§ 3192.1–5(k) in the proposed rule). A new proposed rule that would amend § 3190.2–2, which provides for 50 percent Federal funding of such agreements, to provide for 100 percent funding, is presently under consideration.

Changes on General Services Administration Standard Form 424 necessitated changes in § 3192.1–2(d). Information requested in subparagraphs (3) and (4) of that paragraph are now required in the new forms, and the subparagraphs have been removed as unnecessary.

The principal author of this proposed rulemaking is Susan Pepperney of the Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have

a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

The information collection requirements contained in § 3192.1–2(d)(1) of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 0348–0040, 0348–0043, and 0348–0044.

The information collection requirements contained in § 3192.1–2 (d)(2) and (e) have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects in 43 CFR Part 3190

Administrative practice and procedure, Government contracts, Indian lands—Mineral resources, Intergovernmental relations, Mineral royalties, Oil and gas production, Public lands—Mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, part 3190, Group 3100, subchapter C, chapter II of title 43 of the code of Federal Regulations is amended as set forth below:

Dated: November 19, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

1. The authority citation for Part 3190 continues to read as follows:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act of Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

2. Section 3190.4 is added to read as follows:

§ 3190.4 Availability of information.

Information in the possession of the Bureau of Land Management that is necessary to carry out activities authorized by delegations of authority, cooperative agreements, or contracts entered into under this part will be provided by the BLM to the States and Indian tribes party to such agreements. Release of proprietary data shall be subject to the provisions of § 3190.1 of this part.

3. Subpart 3192 is added to read as follows:

Subpart 3192—Cooperative Agreements with States and Tribes

Sec.

3192.1 Establishment of cooperative agreements with States and tribes.
3192.1–1 Eligibility.
3192.1–2 Request for cooperative agreement.
3192.1–3 Action on request for cooperative agreement.
3192.1–4 Terms of agreements.
3192.1–5 Contents of agreements.
3192.1–6 Allowable costs.
3192.1–7 Performance standards.
3192.1–8 Withdrawal of Indian lands from State cooperative agreements.
3192.2 Activities authorized under cooperative agreements.
3192.2–1 Inspections.
3192.2–2 Enforcement.
3192.2–3 Investigations.
3192.2–4 Oil transporter inspection.
3192.3 Activities not authorized under cooperative agreements.
3192.3–1 Assessments and penalties.
3192.3–2 Collections.
3192.4 State and tribal inspectors.
3192.4–1 Selection of inspectors.
3192.4–2 Training.
3192.4–3 Inspector identification cards.
3192.4–4 Certification.
3192.4–5 Conflict of interest.
3192.5 Termination and reinstatement of agreements.
3192.5–1 Termination.
3192.5–2 Reinstatement.

Subpart 3192—Cooperative Agreements with States and Tribes

§ 3192.1 Establishment of cooperative agreements with States and tribes.

§ 3192.1–1 Eligibility.

(a) Only those States with Federally supervised producing oil and gas leases within their boundaries may enter into cooperative agreements with BLM for the purpose of conducting oil and gas inspections.

(b) Only those tribes with producing oil or gas leases on Indian lands under their jurisdiction may enter into cooperative agreements with BLM for the purpose of conducting oil and gas inspections.

§ 3192.1–2 Request for cooperative agreement.

(a) Any eligible State or Indian tribe may propose to enter into a cooperative agreement with BLM for oil and gas inspection activities, as covered in this part.

(b) The Governor, tribal chairman or other appropriate official shall make a written proposal to the appropriate BLM State Director.

(c) States or tribes may request a preproposal meeting with the BLM for the purpose of obtaining information required for the preparation of a proposal.

(d) Proposals for cooperative agreements shall include the following:

(1) Completed Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information—Non-Construction Programs; and Standard Form 424B—Assurances—Non-Construction Programs.

(2) A description of the type and extent of oil and gas inspection activities proposed under the agreement and the period of time the proposed agreement will be in effect;

(e) States requesting cooperative agreements on Indian lands located within the boundaries of their State must include a signed statement from the appropriate tribal official(s) indicating agreement with the State proposal. The statement must include a description of the type and extent of activities to be carried out by the State on Indian lands and should indicate the period of time the proposed agreement between the State and the tribe will be in effect.

(f) Tribes may include allotted lands under a tribal agreement upon request of the allottee or on their own initiative with the consent of the allottee.

§ 3192.1–3 Action on request for cooperative agreement.

(a) Upon receipt of a proposal for a cooperative agreement from a State or tribe the BLM will review the proposal to determine if it is in keeping with the intent of FOGRMA.

(b) Within 30 days the BLM shall notify the State or tribe whether or not the proposal is complete. If the proposal is complete BLM will also indicate when the State or tribe can expect to begin negotiating the provisions of the agreement. If the proposal is not complete the BLM will state the reasons why the proposal is unacceptable.

§ 3192.1–4 Terms of agreements.

(a) All agreements entered into under this part shall be in accordance with the

purposes of FOGRMA and the Grants and Cooperative Agreements Act of [illegible].

(b) All cooperative agreements shall be valid for a period of 1 to 5 years from the effective date of the agreement. Cooperative agreements may be modified upon written consent of both parties.

(c) Federal assistance received for cooperative agreements shall be used only for costs directly required to carry out the agreed upon activities.

(d) There shall be no subcontracting of agreed upon activities, except for financial audits or program funds, without approval of the authorized officer.

§ 3192.1–5 Contents of agreements.

Cooperative agreements shall contain as a minimum the following:

(a) A statement of purpose, objective and authority;

(b) Definitions as appropriate;

(c) Roles and responsibilities of the BLM and the State or tribe;

(d) A detailed description of activities to be carried out under the agreement;

(e) A detailed description of the lands covered by the cooperative agreement;

(f) Those performance standards required by § 3192.1–7 for activities to be carried out by a State or tribe under the agreement;

(g) Provisions for confidentiality of proprietary information, as provided in § 3190.1 of this title; conflict of interest; shared civil penalties; and termination of the agreement;

(h) Specific contacts for BLM and the State or tribe;

(i) Plans for scheduling inspection activities and for training State or Indian inspectors;

(j) A specific limit on the amount of Federal funding as established by BLM;

(k) Procedures for State or tribe to request reimbursement, as established by 43 CFR part 12, subpart A;

(l) A statement identifying those expenditures that are covered as allowable costs and therefore subject to reimbursement under § 3190.2–2 of this title;

(m) A schedule for periodic reviews and meetings;

(n) Plans for BLM oversight of State or tribe activities.

§ 3192.1–6 Allowable costs.

Allowable costs shall be as specified in 43 CFR part 12, subpart A.

§ 3192.1–7 Performance standards.

The BLM shall establish minimum performance standards for carrying out activities, which shall be incorporated into each agreement and shall be used as the basis for evaluating State or tribal performance.

§ 3192.1–8 Withdrawal of Indian lands from State cooperative agreements.

(a) When an Indian tribe withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe shall provide written notice of its withdrawal of permission to the State, and provide a copy of the notice to the authorized officer.

(b) Upon withdrawal of Indian lands from a State cooperative agreement, the authorized officer shall immediately provide for the inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission from an Indian tribe, that portion of the cooperative agreement applying to the lands covered by the notice shall terminate.

(d) Upon termination of that portion of a State cooperative agreement covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

§ 3192.2 Activities authorized under cooperative agreements.

§ 3192.2–1 Inspections.

(a) Inspections of oil and gas operations covered by this part shall be carried out by State and Indian inspectors only as specified in the agreement.

(b) State and Indian inspectors conducting inspections as authorized representatives of the Secretary shall inspect for compliance with the regulations of the Bureau of Land Management, including Onshore Oil and Gas Orders, and the mineral leasing laws.

(c) State and Indian inspectors may conduct independent inspections, as specified in the agreement, after they are certified to do so as provided in § 3192.4–4 of this title.

(d) BLM shall select leases to be inspected. In making such selection, BLM shall take into account the priorities of the affected State or tribe.

(e) Inspections shall be scheduled in a manner to avoid duplication of effort between the BLM and the State or tribe.

(f) State and Indian inspectors shall use BLM inspection forms when conducting inspections. Completed forms are to be returned to BLM within the time frame specified in the agreement.

(g) Entering into an agreement does not preclude BLM or other authorized representatives of the Secretary from entering lease sites covered by the agreement to conduct inspections, investigations, or enforcement or other activities necessary to supervise lease operations.

§ 3192.2–2 Enforcement.

(a) Certified State and Indian inspectors may, subject to the agreement, be authorized to issue initial Notices of Incidents of Noncompliance, BLM Form 3160–9, and Notice to Shut Down Operation, Form 3160–12, in accordance with the policies of the appropriate BLM State, District or Resources Area Office.

(b) BLM is responsible for issuing any Notices of Incidents of Noncompliance that impose monetary assessments.

§ 3192.2–3 Investigations.

Criminal investigations of thefts of oil, gas, or condensate from Federally-supervised oil and gas leases are the responsibility of the BLM. Participation of State and Indian inspectors in such investigations shall be as specified in the agreement or at the discretion of the authorized officer.

§ 3192.2–4 Oil transporter inspection.

Inspection of oil transporters for documentation required in 43 CFR 3162.7 shall be carried out by State and Indian inspectors only as specified in the agreement.

§ 3192.3 Activities not authorized under cooperative agreements.

§ 3192.3–1 Assessments and penalties.

Imposition of assessments and penalties provided for in 43 CFR 3163.1 and 43 CFR 3163.2 and 3163.3, respectively, including assessments imposed as a result of Notices of Incidents of Noncompliance shall be the responsibility of the BLM.

§ 3192.3–2 Collections.

Collections of assessments and penalties, and collection of any other payments required in this part, shall be the responsibility of the BLM.

§ 3192.4 State and Indian inspectors.

§ 3192.4–1 Selection of inspectors.

(a) States and tribes shall select the inspector candidates to participate in the cooperative agreement program.

(b) Continued inspector participation in the program is contingent upon satisfactory completion of required training, certification, and satisfactory performance of activities carried out under the agreement.

§ 3192.4–2 Training.

(a) BLM shall schedule appropriate classroom and on-the-job training for State and Indian inspectors.

(b) BLM shall be required to train only those inspectors participating in a cooperative agreement.

(c) States and tribes shall ensure that State and Indian inspectors participating in the inspection program attend the appropriate training as required.

(d) Nomination of State and Indian inspectors for training shall be coordinated through the appropriate BLM State or District Office.

§ 3192.4–3 Inspector identification cards.

(a) Inspector identification cards shall be issued by BLM to those State and Indian inspectors who are qualified and are participating in inspection activities under a cooperative agreement. These cards shall identify State and Indian inspectors as representatives of the Secretary of the Interior.

(b) Identification cards remain the property of the Federal Government and shall be surrendered upon request of the authorized officer of BLM.

§ 3193.4–4 Certification.

(a) BLM shall establish standards for certification of State and Indian inspectors no less stringent than those imposed on BLM inspectors.

(b) State and Indian inspectors shall be certified by BLM before conducting independent inspections under this part.

(3) Certification of inspectors shall be contingent upon satisfactory completion of appropriate classroom and on-the-job training.

§ 3192.4–5 Conflict of interest.

(a) State and Indian inspectors shall not inspect the operations of those companies in which they or a member of their immediate family have a direct financial interest.

(b) State and Indian inspectors shall not inspect the operations of those companies in which their immediate supervisors have a direct financial interest.

(c) Information acquired by a State or Indian inspector as a result of his/her participation in a cooperative agreement may not be used for private gain for him/herself or another person by indirect or direct action on his/her part or by counsel, recommendation or suggestion to another person.

§ 3192.5 Termination and reinstatement of agreements.

§ 3192.5–1 Termination.

(a) A cooperative agreement may be terminated at any time by mutual agreement.

(b) A cooperative agreement may be terminated unilaterally by the BLM if it has been determined that the State or tribe has failed to carry out the terms of the agreement, or upon a finding that the agreement is no longer needed.

(c) If BLM intends to terminate an agreement under § 3192.5–1(b) because of a failure on the part of the State or tribe to carry out the terms of the agreement, the reason(s) shall be specified in detail in a notice of intent to the State or tribe. The State or tribe may provide a plan for correction. If the corrections proposed by the State or tribe will remedy the failure, the BLM may agree to withdraw the notice of intent. If the State or tribe does not implement corrective action within 30 days of BLM approval of the plan, BLM may provide a subsequent notice of termination. Failure to respond within 30 days to a notice of intent to terminate shall result in termination of the agreement.

§ 3192.5–2 Reinstatement.

(a) If a cooperative agreement has been terminated by mutual consent under § 3192.25–1(a) of this title, the State or Indian tribe may request that the appropriate State Director reinstate the cooperative agreement. The State Director, on receipt of the request, shall determine whether the cooperative agreement should be reinstated, and if so, what modifications, if any, should be made to the agreement.

(b) For cooperative agreements terminated under § 3192.5–1(b) due to deficiencies by the State or tribe in carrying out the provisions of the agreement, the State or tribe shall provide evidence that it has remedied all defects for which the cooperative agreement was terminated and that it is fully capable of resuming the activities to be carried out under the cooperative agreement. The State Director shall determine whether the cooperative agreement should be reinstated, and if so, what modifications, if any, should be made to the agreement.

[FR Doc. 91–1815 Filed 1–24–91; 8:45 am]

BILLING CODE 4310–84–M

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1990.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(103) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(103) A revision to the Metropolitan-Davidson County portion of Tennessee's SIP, Regulation No. 7—Regulation for Control of Volatile Organic Compounds was submitted on February 16, 1990.

(i) Incorporation by reference.

(A) Regulation No. 7—Regulation for the Control of Volatile Organic Compounds, except Section 7–22, effective February 14, 1990.

(ii) Other material.

(A) Letter of February 16, 1990 from the Tennessee Department of Health and Environment.

3. Section 52.2225 is added to read as follows:

§ 52.2225 VOC rule deficiency correction.

(a) The revisions to sections 7–1, 7–2, 7–3, 7–5, 7–6, 7–7, 7–8, 7–9, 7–10, 7–13, 7–14, 7–16, 7–17, 7–18, 7–19, 7–20, 7–22, 7–23, 7–24, and 7–25 of the Tennessee Regulations are approved. The State submitted these regulations to EPA for approval on February 16, 1990. These sections were intended to correct deficiencies cited in a letter calling for the State to revise its SIP for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville-Davidson County.

Deficiencies in the following aspects of the Tennessee Regulations, however, have not been corrected:

(1) Section 7–2 defines the RACT applicability level as 1000 tons/year.

(2) In Section 7–3, Petition for Alternative Controls, the words "as applied" should be added to the term "VOC/gallon solids" as a clarification.

(3) The term "vapor-tight" should be defined in section 7–13.

(4) "Once-in/always-in" is missing from the applicability section of the individual rules.

(5) Section 7–25, "Recordkeeping and Reporting Requirements" should be revised to include additional requirements that would contain: units of compliance consistent with the performance requirements; applicable time periods for data entries; and a clear, separate provision that requires records to be kept.

(b) The above deficiencies must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guidance relating to the deficiencies before the SIP for ozone can be fully approved.

[FR Doc. 91–5671 Filed 3–8–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400, 5420, 5450, 5460, and 9230

[AA–230–00–4311–02; Circular No. 2633]

RIN 1004–AB48

Sales of Forest Products; General; Preparation for Sale; Award of Contract; Sales Administration; Trespass

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rule amends provisions of the existing regulations in 43 CFR part 5400—Sales of Forest Products; General, part 5420—Preparation for Sale, part 5450—Award of Contract, part 5460—Sales Administration, and part 9230—Trespass. The final rule provides for more effective control of the trespass of timber or other vegetative resources. It provides minimum standards for management and protection of timber and other vegetative resources, and for penalties, which may be supplemented by State law, for trespass. The final rule provides guidance concerning the sale of timber products and other vegetative resources. Further explanation of contract and permit content, requirements, stipulations, and penalties are addressed. In addition, definitions are added for several terms used in the rule.

EFFECTIVE DATE: April 10, 1991.

ADDRESSES: Inquiries and suggestions should be sent to: Director (230), Bureau of Land Management, room 901, Premier Building, 1725 I Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653–8864.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rulemaking on November 28, 1989 (54 FR 48917). One comment letter was received from an industry association and two from Federal agencies. All were considered in the decisionmaking process on the final rule.

One comment from an office of the Bureau of Land Management (BLM) suggested adding a section listing specifically the acts that would be treated as trespass and prohibited, and a section spelling out the penalties for trespass. It has been determined that it would be appropriate to add these sections. However, in order to allow the public an opportunity to review them, they will be published in a separate proposed rule.

One comment generally supported BLM's efforts to strengthen its trespass regulations, but offered a number of suggestions.

One suggestion was that since BLM and Forest Service timber are generally sold in the same market, liquidated damages for trespass of Federal timber should be the same. However, considering the increasing problem of timber trespass, there is a need for adequate penalties for unauthorized cutting as a deterrent to such cutting. The Forest Service regulations do not contain adequate penalties, especially in cases where criminal intent cannot be proved.

One comment suggested that the penalty for nonwillful trespass should be equal to fair market value, deposits, and administrative costs. It was further stated that if the trespass could be prevented through better sale layout—delineation of sale boundaries—or through better instructions by the contract administrator, then the BLM must recognize and accept some liability. The BLM makes every effort to ensure that sale layout is done in such a manner that timber sold under the contract is clearly designated, and also that the contract has provisions for its modification in cases where it is necessary to cut timber that was not designated in the original layout or where unavoidable damage to reserved timber occurs in the normal course of logging. The purchaser also has the responsibility to adhere to the contract and to seek further clarification if he is

in doubt as to whether timber is designated or not. There have been very few cases where a trespass has been committed because of poor sale layout because of lack of clear instructions to the purchaser. Without some penalty for nonwillful trespass, an unscrupulous operator could "nonwillfully" obtain additional timber and, if he got caught, would only have to pay the value of the timber taken. In effect, he would be getting a contract modification for his benefit and convenience, without following the modification procedure. The suggestion was not adopted in the final rule.

Another comment stated that the Forest Service regulations provide that, for willful trespass, liquidated damages are set at double the stumpage value plus whatever deposits to reclamation and other funds would be required under a contract for the timber that was the subject of the trepass. It was suggested that BLM bring its proposal into line with the regulations of the Forest Service. However, the BLM has set its damages at a level that is consistent with State law in many of the States in which public lands lie.

The BLM needs a substantial penalty for willful trespass as a deterrent against such trespass. The provision in this rule is similar to the current regulations in States that provide for double damages for willful trespass. This provision will allow for more severe penalties in States that do not have adequate penalties at the present time. The suggestion in the comment was not adopted.

Another comment stated that all trespass would require some type of appraisal in order to establish fair market value. It suggested that this regulation should articulate how such appraisal will be made. It also suggested that where timber trespass occurred on a timber sale, that the current contract rates be used as the fair market value. The recommendation that the rule articulate how appraisals will be made was partially adopted by including a definition of fair market value in the final rule. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354. The suggestion that current contract prices be treated as fair market value was not adopted because the contract prices do not always reflect the fair market value at the time of the trespass, especially on 3-year contracts.

Another comment concurred with and supported the amendment adding § 5450.1(c), which makes it clear when a contract award is effective, and requires terms and conditions both reflect contractor's ability to perform and provide for mitigation of environmental degradation.

One comment recommended removing the phrase "or reflective of an honest mistake" from the definition of nonwillful in § 5400.0–5. This phrase was included in similar definitions in 43 CFR part 2920 and has resulted in the U.S. Attorney declining to prosecute using criminal remedies. Even those persons who may have committed a willful act by definition could still raise an "honest mistake" defense and cloud the issues. This suggestion was adopted.

One comment recommended revising the definition of public lands to conform to the Federal Land Policy and Management Act, 43 U.S.C. 1702(e): "Any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." This recommendation was adopted in the final rule.

Editorial changes have been made in the definition section for purposes of clarity and accuracy. The definition of "permit" was amended in the final rule by substituting the word "permittee" for the word "purchaser" to fit situations where free use permits are issued. The definition of "purchaser" was amended in the final rule by adding the phrase "or other vegetative resources" at the end of the definition to conform to the policy and regulatory provisions found in §§ 5402.0–6, 5462.1, and elsewhere in the rule.

The principal author of this final rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 5400

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5420

Forest and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5450

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 9230

Penalties, Public lands.

Under the authorities cited below, parts 5400, 5420, 5450, and 5460 of group 5000, subchapter E, and part 9230 of group 9200, subchapter I, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

Dated: January 24, 1991.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

PART 5400—[AMENDED]

1. The authority citation for part 5400 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 1181a, 16 U.S.C. 607a, and 43 U.S.C. 1701 et seq.

2. Section 5400.0–3 is amended by adding paragraph (e) to read as follows:

§ 5400.0–3 [Amended]

* * * * *

(e) Authority to enforce the provisions of this title is contained in the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.).

3. Section 5400.0–5 is amended by removing the lettered paragraph designations while retaining the numbered subparagraph designations, reordering the paragraphs in alphabetical order of the terms defined, italicizing the defined terms at the beginning of each definition paragraph, by revising the definitions of "public lands" and "other vegetative resources," and by adding the following paragraphs in alphabetical order, to read as follows:

§ 5400.0–5 Definitions.

Affiliate means a business entity including but not limited to an individual, partnership, corporation, or association, which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

* * * * *

Commercial use means use intended for resale, barter, or trade, or for profit.

* * * * *

Fair Market value means the price forest products will return when offered for competitive sale on the open market. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354.

* * * * *

Incidental use means personal use of other vegetative resources on the site where they are obtained, or, if they are transported to a secondary location, personal use of the resources within a reasonable period of time by the person obtaining them.

* * * * *

Nonwillful means an action which is inadvertent, mitigated in character by the belief that the conduct is reasonable or legal.

* * * * *

Other vegetative resources means all vegetative material that is not normally measured in board feet, but can be sold removed from public lands by means the issuance of a contract or permit.

Permit means authorization in writing by the authorized officer or other person authorized by the United States Government, and is a contract between the permittee and the United States.

Personal use means use other than for sale, barter, trade, or obtaining a profit.

Product value means the stumpage value of timber or the fair market value of other vegetative resources.

Public lands means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.

Purchaser means a business entity including, but not limited to, an individual, partnership, corporation, or association that buys Federal timber or other vegetative resources.

* * * * *

Trespass means the severance, removal, or unlawful use of timber or other vegetative resources without the consent (authorization) of the Federal Government, or failure to comply with contract or permit requirements that causes direct injury or damage to timber or other vegetative resources, or undue environmental degradation.

Trespasser means any person, partnership, association, or corporation responsible for committing a trespass.

Willful means a knowing act or omission that constitutes the voluntary or conscious performance of a prohibited act or indifference to or reckless disregard for the law.

§ 5401.0–6 [Amended]

4. Section 5401.0–6 is amended by inserting the phrase "or other vegetative resources" after the word "timber" in the fourth (last) sentence of paragraph (a).

5. Section 5402.0–6 is amended by revising paragraph (c)(2) to read as follows:

§ 5402.0–6 Policy.

* * * * *

(c) * * *

(2) The contract is for the disposal of timber or other vegetative resources, for which it is impracticable to obtain competition.

PART 5420—[AMENDED]

6. The authority citation for part 5420 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367; Sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e.

§ 5424.0–5 [Removed]

7. Section 5424.0–5 is removed.

8. Section 5424.0–6 is revised to read as follows:

§ 5425.0–6 Policy.

(a) All timber sales shall be made on contract or permit forms approved by the Director, BLM.

(b) Other than for incidental use, the severance and/or removal of any vegetative resource for personal or commercial use requires a written contract or permit issued by the authorized officer or other person authorized by the United States. All contracts or permits shall contain the following:

(1) The name of the purchaser or his/her authorized representative with complete mailing address.

(2) The specific vegetative resources authorized for removal and their respective quantities and values.

(3) The specific location from which the vegetative resources are to be removed.

(4) The term for which the contract or permit is valid.

(5) Contract or permit conditions and stipulations.

(6) Signature of purchaser or authorized representative.

(c) The authorized officer may include additional provisions in the contract or permit to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and the protection of improvements, watersheds, recreational values, and the prevention of pollution or other environmental degradation.

(d) The contract or permit from and any additional provisions shall be made available for inspection by prospective bidders during the advertising period. When sales are negotiated, all additional provisions shall be made part of the contract or permit.

(e) Except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, each timber sale contract shall include provisions that prohibit:

(1) The export of any unprocessed timber harvested from the area under contract; and

(2) The use of any timber of sawing or peeler grades, sold pursuant to the contract, as a substitute for timber from private lands which is exported or sold for export by the purchaser, an affiliate of the purchaser, or any other parties.

PART 5450—[AMENDED]

9. The authority citation is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

10. Section 5450.1 is amended by adding paragraph (c) to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

* * * * *

(c) Award of contracts or permits on negotiated sales occurs upon the execution of the contract or permit. Terms and conditions shall reflect the contractor's ability to perform, and shall require prevention or mitigation of environmental degradation associated with the removal of the timber or other vegetative resource.

PART 5460—[AMENDED]

11. The authority citation for part 5460 is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

12. Part 5460 is amended by adding new subpart 5642 to read as follows:

Subpart 5462—Contract and Permit Requirements

[illegible]2.1 Contract and permit compliance.

(a) The following minimum requirements shall be met in order to assure contract or permit compliance:

(1) Contracts or permits shall be executed by authorized purchasers or their formally designated representatives.

(2) For other than lump sum sales, only the specific timber or other vegetative resource designated for removal, in their respective quantities, shall be removed.

(3) Timber or other vegetative resources shall be removed only from designated locations or areas.

(4) Transportation of timber or other vegetative resources shall be in accordance with contract or permit requirements and shall include appropriate load or product tagging if required.

(5) Contract or permit stipulations and specification shall be adhered to.

(6) Payments shall be made in accordance with subpart 5461 of this title.

(b) All contract and permit provisions and special provisions shall be adhered to unless the contract is modified in accordance with part 5470 of this title.

[illegible]T 9230—[AMENDED]

13. The authority citation for part 9230 is revised to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701; et seq.; 18 U.S.C. 1851–1858.

SUBPART 9239—[AMENDED]

§ 9239.0–7 [Amended]

14. Sections 9239.0–7 is amended by inserting after the word "timber" in the first sentence the phrase "or other vegetative resources."

§ 9239.0–8 [Amended]

15. Section 9239.0–8 is amended by inserting in the first sentence between the word "timber" and the comma immediately following it the phrase "or other vegetative resources."

§ 9239.1 [Amended]

16. Section 9239.1 is amended by revising the heading to read: "Timber and other vegetative resources."

17. Section 9239.1–1 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (d)(1), (2), and (3), respectively, by revising the section heading, and by adding new paragraphs [illegible]hrough (c) and an introductory text [illegible]aragraph (d) to read as follows:

§ 9239.1–1 Unauthorized cutting and/or removal.

(a) All of the definitions in § 5400.0–5 of this title apply to this section.

(b) Authorization by contract or permit for other than incidental use shall be obtained prior to the cutting and/or removal of any vegetative resources. Severance or removal of timber or other vegetative resources without a contract or permit, or the use of an invalid contract or permit, constitutes a trespass and is a violation of regulation subject to criminal penalties.

(c) Failure to comply with any of the requirements and/or stipulations of a contract or permit may, if determined to be detrimental to the public interest by the authorized officer, result in the cancellation of the contract or permit. Individual contracts or permits may contain specific language defining the remedies or penalties associated with noncompliance. Cancellation shall be mandatory in cases of:

(1) Intentional falsification of information;

(2) Unauthorized activity; or

(3) Activity by unauthorized person or entity.

(d) Permittees under part 5510 are subject to the following prohibitions:

* * * * *

18. Section 9239.1–2 is amended by redesignating the existing text as paragraph (b), by revising the heading, and adding new paragraph (a) to read as follows:

§ 9239.1–2 Penalty for unauthorized cutting and/or removal.

(a) In accordance with §§ 9239.0–7, 9239.0–8, and 9239.1–1 of this title, violators of the terms and conditions of a contract or permit, or persons who cut or remove timber or other vegetative resources without a contract or permit, are in trespass and may be prosecuted under title 18 of the United States Code or under State criminal law.

* * * * *

19. Section 9239.1–3 is revised to read as follows:

§ 9239.1–3 Measure of damages.

(a) Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum damages apply to trespass of timber and other vegetative resources:

(1) Administrative costs incurred by the United States as a consequence of the trespass.

(2) Costs associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass.

(3) Twice the fair market value of the resource at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

(b) The provisions of paragraph (a) of this section shall not be deemed to limit the measure of damages that may be determined under State law.

[FR Doc. 91–5635 Filed 3–8–91; 8:45 am]
BILLING CODE 4310–84–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Conservation Project Support Program and Professional Services Program Grants

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum Services issues an amendment to its regulations governing awards in excess of the normal $25,000 ceiling amount for the conservation grant program. 45 CFR 1180.20. Section 1180.20(f)(1) authorizes the Director to make awards in excess of $25,000 in exceptional circumstances. This amendment authorizes the Institute to set annually a maximum award level for the Conservation Project Support grants awarded under the exceptional circumstances provision of 1180.20(f)(1).

IMS makes a technical amendment to the regulations for the Professional Services Program to remove the limitation that financial assistance for a project may not be provided for longer than one year. This amendment conforms the regulations to a change in the Museum Services Act made by Public Law 101–512, which eliminates the one-year restriction for these projects.

DATES: These regulations are effective March 11, 1991.

ADDRESSES: Institute of Museum Services, room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca W. Danvers, Program Director, (202) 786–0539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act"), title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976, and was most recently amended in 1990. Public Law 101–512. The purpose of the Act is

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004-AB21

43 CFR Part 3160

[WO-610-4111-02-24 1A; Circular No. 2634]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations; Clarification

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends Onshore Oil and Gas Order No. 2—Drilling Operations to clarify certain well control, casing, mud program, and drilling abandonment requirements, and to specify the circumstances when used casing may be utilized.

EFFECTIVE DATE: February 26, 1992.

ADDRESSES: Inquiries or suggestions should be sent to Director (610), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent, (202) 653-2174, or Howard A. Lemm, (801) 539-4032.

SUPPLEMENTARY INFORMATION: Onshore Oil and Gas Order No. 2 (the Order) of the Bureau of Land Management (BLM) on Drilling Operations was published in the Federal Register on November 16, 1988 (53 FR 46798). Experience with and further consideration of the Order showed that certain provisions needed to be amended to improve their clarify and workability, and to elaborate on conditions for applying them. Accordingly, on January 18, 1991 (56 FR 1965), the BLM published a proposed rule to amend the Order and solicited public comment.

The comment period ended on March 19, 1991. In all, 163 comments were received, 160 from business entities or individuals identifying themselves with such entities, 1 from a trade association, and 2 from individuals not stating an affiliation with any business entity. All of the comments were carefully considered in the development of this final rule.

Several comments suggested changes in or clarifications of portions of the Order that were not proposed to be amended in the proposed rule. These suggestions cannot be considered at this time, or included in this final rule, because the public has not had an opportunity to review them. They may be addressed in a subsequent proposed rule.

One comment suggested additional language to make it clear that the fluid level referred to in paragraphs ii. and iii. of article III.A.2.c. is that of the level in the fluid reservoir of the accumulator system. This comment has been adopted in the final rule, and the section on the minimum standards and enforcement provisions for the pressure accumulator system has been amended to provide that the capacity of the fluid reservoir of the system is required to be double the usable fluid volume of the accumulator system as opposed to the total volume of the system. This change will clarify the intent of the Order and accommodate standard reservoir sizes now in use.

The majority of the comments addressed the proposed amendment of article III.B.1.a. that governed the use of used casing. Most of these comments opposed the limitation of used casing to wells of shallow depths and low pressures. At the same time, the comments tacitly accepted the need for reasonable assurance of wellbore integrity and protection of the subsurface environment, stating that used casing meeting or exceeding American Petroleum Institute standards is sufficient. The BLM is persuaded that, in probably the majority of cases, such used casing is sufficient to protect the subsurface environment. In the final rule, the provision has been amended to allow the use of used casing, subject to the approval of the authorized officer, without limitation to particular ranges of depths or pressures.

The casing requirements are, therefore, amended to provide that used casing may be employed only when it is verifiable to be at least 87½ percent of the nominal wall thickness of new casing. This will allow the authorized officer to eliminate the safety risk of used casing being used under circumstances posing a substantial risk of casing failure and resulting environmental degradation and loss of resources.

Article III.B.1.f. is also amended to state that centralizers shall be placed on the bottom 3 joints of surface casing rather than on every fourth joint, with a minimum of 1 centralizer per joint, starting with the shoe joint, in order to allow remedial cementing of the upper part of the casing string. A comment suggested requiring additional centralizers for the surface casing. Requirements in this section merely represent minimum standards, and the BLM encourages operators to exceed those standards. In addition, the authorized officer may require extra centralization for any casing string when necessary to promote cement isolation across usable quality aquifers or other mineral resources. The rule is thus only intended to provide a minimum standard, which can be applied in most ordinary circumstances, but which may be made more stringent in appropriate cases by the authorized officer. The comment is not adopted in the final rule.

The Order is also amended to include a reference to Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations, for requirements as to the availability and use of hydrogen sulfide safety and monitoring equipment.

The definition for "Tagging the Plug" when abandoning drilling operations is amended to replace the requirement that the plug be tagged by placing the weight of the string of tubing or drill pipe, with a requirement of placing a weight on the plug sufficient to show that the plug is in place and properly set. This may be the entire unbuoyed weight of the drill string in many cases, but in some cases, due to plug setting depth and compressive strength, excessive weight may cause string fill-up and/or plug damage.

The principal author of this final rule is Howard Lemm of the Montana State Office, assisted by the staff of the Division of Legislation and Regulatory Management, all of the BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely

to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The changes in the Order define and clarify the responsibilities of the lessees and operators with respect to drilling operations on Federally supervised leases. Affected parties should derive a benefit from the changes, which may reduce the overall economic burden. The actual impact of the changes would be difficult to quantify. However, they would not meet any of the criteria established by the Executive Order. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. The principal small entities affected by this rule will be the oil and gas lessees and operators known as "independents," as well as drilling equipment and pipe suppliers. However, the changes will have no significant economic effect on a substantial number of small entities, so long as there is compliance with the applicable requirements. The requirements are applied uniformly without regard to the size of entity affected. While this may be viewed as imposing a more severe burden on small operators and manufacturers, to do otherwise would be discriminatory on its face and could result in the large companies creating small subsidiaries to avoid compliance when operating on Federal and Indian leases.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. No real or personal property would be taken as a result of the rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in 43 CFR part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0134 and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, and for the reason stated in the preamble, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: November 19, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: 30 U.S.C. 183 et seq., 30 U.S.C. 351–359, 30 U.S.C. 301–306, 25 U.S.C. 396, 25 U.S.C. 396a–396q, 25 U.S.C. 397, 25 U.S.C. 398, 25 U.S.C. 398a–398c, 25 U.S.C. 399, 43 U.S.C. 1457. See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), 40 U.S.C. 471 et seq., 42 U.S.C. 4321 et seq., 42 U.S.C. 6508, Public Law 97–78, 30 U.S.C. 1701 et seq., 25 U.S.C. 2102 et seq.

2. Notes 1 and 2 at the beginning of part 3160 are removed.

§ 3160.0–9 [Added]

3. Section 3160.0–9 is added to read as follows:

§ 3160.0–9 Information collection.

(a) The information collection requirements contained in §§ 3162.3, 3162.3–1, 3162.3–2, 3162.3–3, 3162.3–4, 3162.4–1, 3162.4–2, 3162.5–1, 3162.5–2, 3162.5–3, 3162.6, 3162.7–1, 3162.7–2, 3162.7–3, 3162.7–5, 3164.3, 3165.1, and 3165.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance Number 1004–0134. The information may be collected from some operators either to provide data so that proposed operations may be approved or to enable the monitoring of compliance with granted approvals. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain benefits under the lease.

(b) Public reporting burden for this information is estimated to average 0.4962 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0134, Washington, DC 20503.

(c)(1) The information collection requirements contained in part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned the following Clearance Numbers:

OPERATING FORMS

Form No.	Name and filing date	OMB No.
3160–3	Application for Permit to Drill, Deepen, or Plug Back—Filed 30 days prior to planned action	1004–0136
3160–4	With Completion of Recompletion Report and Log—Due 30 days after well completion	1004–0137
3160–5	Sundry Notice and Reports on Wells—Subsequent report due 30 days after operations completed	1004–0135

The information will be used to manage Federal and Indian oil and gas leases. It will be used to allow evaluation of the technical, safety, and environmental factors involved with drilling and producing oil and gas on Federal and Indian oil and gas leases. Response is mandatory only if the operator elects to initiate drilling, completion, or subsequent operations on an oil and gas well, in accordance with 30 U.S.C. 181 *et seq.*

(2) Public reporting burden for this information is estimated to average 25 minutes per response for clearance number 1004–0135, 30 minutes per response for clearance number 1004–0136, and 1 hour per response for clearance number 1004–0137, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0135, 1004–0136, or 1004–0137, as appropriate, Washington, DC 20503.

(d) There are many leases and agreements currently in effect, and which will remain in effect, involving

both Federal and Indian oil and gas leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements also often specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager, and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR part 221 or specific sections thereof, which has been redesignated as 43 CFR part 3160. Those references shall now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or Minerals Management Service, as appropriate.

§ 3164.1 [Amended]

4. Section 3164.1(b) is amended by revising the second entry of the table to read as follows:

Order No.	Subject	Effective Date	Federal Register reference	Supersedes
*	*	*	*	*
2	Drilling operations Amended	December 19, 1988	53 FR 46798	None.
*	*	*	*	*

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Note.—These amendments to the appendix published at 53 FR 46804. Nov. 18, 1988, for information only and will not appear in the Code of Federal Regulations.

Appendix—Text of Oil and Gas Order No. 2 [Amended]

5. Article II.V. is revised to read as follows:

* * * * *

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing sufficient weight on the plug to insure its integrity. Other methods of tagging the plug may be approved by the authorized officer.

6. Article III.A.2.b.ii. is amended by adding the following sentence at the end of the first paragraph thereof:

ii. * * * The configuration of the chokes may vary.

7. Article III.A.2.c. is amended by revising the third sentence of paragraph ii. and the second sentence of paragraph iii. thereof to read as follows, respectively:

ii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level of the reservoir shall be maintained at the manufacturer's recommendations. * * *

* * * * *

iii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level of the reservoir shall be maintained at the manufacturer's recommendations. * * *

8. Article III.B.1.a. is amended by adding at the end of the first paragraph thereof and before the paragraph "Violation: Major" the following sentence:

a. * * * All casing, except the conductor casing, shall be new or reconditioned and tested casing. All casing shall meet or exceed API standards for new casing. The use of reconditioned and tested used casing shall be subject to approval by the authorized officer; approval will be contingent upon the wall thickness of any such casing being verified to be at least 87½ percent of the nominal wall thickness of new casing.

9. Article III.B.1.f. is amended by revising the first paragraph thereof to read:

f. Surface casing shall have centralizers on the bottom 3 joints of the casing (a minimum of 1 centralizer per joint, starting with the shoe joint). * * *

10. Article III.C.6.b. is revised to read as follows:

b. Hydrogen sulfide safety and monitoring equipment requirements may be found in Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations.

[FR Doc. 92-1763 Filed 1-24-92; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket 92-03]

Rules of Practice and Procedure; Special Docket Applications

AGENCY: Federal Maritime Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Commission is amending its rules regarding the processing of special docket applications to authorize the Secretary of the commission to assign such applications to Special Docket Officers for review and initial decision. The Secretary will retain discretion to assign particular applications to the Office of Administrative Law Judges as appropriate. This change will relieve much of the current workload burden experienced by the Office of Administrative Law Judges and allow the Commission to better utilize its limited resources.

DATES: Interim rule effective upon publication in the **Federal Register**; comments must be received on or before February 26, 1992.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC, 20573-0001.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Rule 92 (46 CFR 502.92) of the Commission's Rules of Practice and Procedure contains regulations outlining the procedures for the filing and processing of special docket applications. Such applications may be filed by a common carrier or shipper for permission to refund or waive collection of a portion of freight charges where it appears that there is an error in the carrier's tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff. Under current Commission practice all such applications are referred by the Secretary of the Commission to the Commission's Office of Administrative Law Judges ("OALJ") for review and for issuance of an initial decision.

The number of special docket applications filed with the Commission has increased dramatically over the last year. This increase has occurred at a time when the number of formal docket proceedings assigned to OALJ also has increased significantly. These increases have created a significant workload burden for OALJ. In an effort to reduce this workload burden and to better utilize staff resources the Commission has determined to transfer the principal responsibility for review of special dockets to the Office of the Secretary of the Commission. Under this procedure the Secretary will have the authority to assign special docket applications to Special Dockets Officers, who will review each application and issue an initial determination, as the ALJs do currently. The process for filing of exceptions and/or review of initial determinations by the Commission will continue. The Secretary also will be given the discretion to continue to refer particular applications to OALJ for disposition when deemed appropriate.

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and alternative test methods, continuous monitoring procedures, and reporting requirements. Therefore, the sections mentioned above of 40 CFR part 61, subpart M are among the sections which may not be delegated.

The EPA hereby notifies the public that it has delegated the authority over certain NESHAP subparts to Nashville-Davidson County of the State of Tennessee.

The Office of Management and Budget exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: June 16, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92-15741 Filed 7-2-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3260

[WO-610-4141-24 1A]; Circular No. 2636]

RIN 1004-AB90

Geothermal Resources Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing appeals of decisions relating to geothermal resources operations to allow an authorized officer's decision to remain in effect during the pendency of an appeal. The amendment allows the Interior Board of Land Appeals (IBLA) to determine whether the issues involved in an appeal warrant a stay of geothermal resources operations and the accompanying delays and economic consequences.

EFFECTIVE DATE: August 5, 1992.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653-2127.

SUPPLEMENTARY INFORMATION: This rule amends the "Appeals" section at 43 CFR 3266.1 to provide that a decision of the authorized officer remains in full force and effect during the pendency of an appeal, unless otherwise determined by the IBLA, and to state how petitions for stay of decisions may be filed. The amendment provides the IBLA the opportunity to determine whether the issues raised in an appeal, especially with regard to the environmental sensitivity of the area affected and the potential for significant environmental or public health and safety impact, warrant a stay of the approval until the IBLA rules on the appeal.

A proposed rule to amend 43 CFR part 3260 to allow decisions on geothermal resources operations to be placed in full force and effect pending appeal was published in the **Federal Register** on November 25, 1991. Public comments were invited for 60 days, until January 24, 1992. The Bureau of Land Management (BLM) received 9 letters concerning the proposed rule during the 60-day public comment period. Five of the letters came from corporations, 2 from attorneys, 1 from an association, and 1 from an office of a Federal agency. All of the comments supported the proposed rule.

Only one comment letter suggested amending the proposed rule. This comment urged the BLM to "require the appellant to serve the stay request on the geothermal operator whose activities are subject to the appeal," and to provide the operator "with an opportunity to oppose the stay." Finally, it suggested that a deadline "be established within which a stay request must be filed by the appellant." These amendments are not necessary to accomplish the purposes put forward by the correspondent, because they are covered in 43 CFR part 4. Existing regulations at 43 CFR 4.22(b) and 4.413 require that a "copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case," except for documents requesting limitation of disclosure of confidential documents. Existing regulations at 43 CFR 4.414 provide the operator or any party served with a notice of appeal opportunity to participate in the appeal by filing an answer to the appeal. Section 4.411 allows the appellant 30 days to file the appeal. Petitions for stay, to be of any use to the appellant, would normally be filed at the same time as the appeal, if the appellant's purpose is to prevent or stop the operation before the damage alleged by the appellant occurs. For an appellant to delay filing a petition for stay would defeat the purpose as well as create equitable arguments against the petition. The suggestions in the comment are not adopted in the final rule.

The regulatory language in § 3266.1(b) has been expanded somewhat from the proposed rule to state clearly the standards that need to be met before a stay of a decision can be obtained, and also to make clear that the IBLA has been delegated the authority to determine whether a stay is warranted.

The principal author of this final rule is Douglas Koza, Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the rule does not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While this rule is expected to have a favorable effect on geothermal operators, such benefits will not approach the $100 million threshold, and should have only a favorable effect on costs to consumers and others, and only favorable effects on competition, employment, investment, productivity, innovation, or on the ability of United

States-based enterprises to compete with foreign-based enterprises. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a government action capable of interference with constitutionally protected property rights. No provision in the rule relates to a taking of property or interests in property. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects for 43 CFR Part 3260

Environmental protection, Geothermal energy, Government contracts, Public lands–mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authorities cited below, part 3260, group 3200, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3260—GEOTHERMAL RESOURCES OPERATIONS

1. The Authority citation for 43 CFR part 3260 is revised to read as follows:

Authority: 30 U.S.C. 1001–1025.

Subpart 3266—Appeals

2. Section 3266.1 is revised to read as follows:

§ 3266.1 Appeals.

(a) A party adversely affected by a decision of the authorized officer may appeal that decision to the Interior Board of Land Appeals as set forth in part 4 of this title.

(b) All decisions or approvals of the authorized officer under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of the authorized officer under this subpart. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

Dated: June 4, 1992.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92–15627 Filed 7–2–92; 8:45 am]

BILLING CODE 4310–84–M

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43 CFR Part 4700

[WO–250–4370–02–24 1A; Circular No. 2637]

RIN 1004–AB87

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Prohibited Acts, Administrative Remedies, and Penalties; Administrative Remedies

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule allows the authorized officer of the Bureau of Land Management (BLM) to place in full force and effect, pending appeal, decisions to remove excess wild free-roaming horses and burros from public or private land. The timely removal of excess animals will maintain appropriate management levels, prevent injury to, or death of, wild horses and burros, reduce damage to public land resources, and reduce future costs associated with removal and disposition.

EFFECTIVE DATE: August 5, 1992.

ADDRESSES: Suggestions or inquiries should be sent to Director (250), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vernon R. Schulze, (202) 653–9215.

SUPPLEMENTARY INFORMATION: A proposed rule to amend 43 CFR part 4700 to allow decisions on gathering excess wild free-roaming horses and burros from public or private lands to be placed in full force and effect pending appeal was published in the Federal Register on July 2, 1991. Public comments were invited for 30 days, until August 1, 1991. The BLM received 15 letters concerning the proposed rule during the 30-day public comment period. Three of the letters came from private individuals, nine from associations, and three from State government agencies. Of the 15 letters received, 8 expressed opposition and 5 expressed support for the proposed rule. The remaining two letters contained no comments addressing provisions of the proposed rule. The specific comments contained in these letters and the responses to the comments are provided below.

Two comments suggested that the proposed rule is in conflict with the Wild Free-Roaming Horse and Burro Act (the Act). Neither comment indicated in what way the rule was inconsistent with the Act. Therefore, it is difficult to respond directly to these comments. However, the Act states: "Where the Secretary determines * * * that an overpopulation exists on a given area of public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels." The rule provides a mechanism for complying with this section of the Act by assuring that excess animals can be removed immediately when that action is needed to protect individual excess animals or the habitat of the remaining population.

Several comments suggested that the BLM already has the authority to expedite the removal of excess animals, when needed, under provisions of 43 CFR 4.21(a). This section of the Code of Federal Regulations (CFR) states "a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director (Office of Hearings and Appeals) or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately." Although this provision allows the Director of the Office of Hearings and Appeals, or the IBLA, to place a decision to remove animals in full force and effect, the time needed to file a brief explaining the need for an expedited decision and receiving a decision from the Director or the IBLA normally exceeds 2 months. In emergency situations, a delay of 2 months or more could cause severe or permanent injury to the animals and/or the habitat. In addition, the authority for determining the need for placing a decision in full force and effect should rest with the BLM field official who is accountable for the action and is in the best position to judge the need for immediate action to remove excess animals to protect the health of both the

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States-based enterprises to compete with foreign-based enterprises. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a government action capable of interference with constitutionally protected property rights. No provision in the rule relates to a taking of property or interests in property. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects for 43 CFR Part 3260

Environmental protection, Geothermal energy, Government contracts, Public lands–mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authorities cited below, part 3260, group 3200, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3260—GEOTHERMAL RESOURCES OPERATIONS

1. The Authority citation for 43 CFR part 3260 is revised to read as follows:

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2. Section 3266.1 is revised to read as follows:

§ 3266.1 Appeals.

(a) A party adversely affected by a decision of the authorized officer may appeal that decision to the Interior Board of Land Appeals as set forth in part 4 of this title.

(b) All decisions or approvals of the authorized officer under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of the authorized officer under this subpart. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

Dated: June 4, 1992.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92–15627 Filed 7–2–92; 8:45 am]

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43 CFR Part 4700

[WO–250–4370–02–24 1A; Circular No. 2637]

RIN 1004–AB87

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SUMMARY: This final rule allows the authorized officer of the Bureau of Land Management (BLM) to place in full force and effect, pending appeal, decisions to remove excess wild free-roaming horses and burros from public or private land. The timely removal of excess animals will maintain appropriate management levels, prevent injury to, or death of, wild horses and burros, reduce damage to public land resources, and reduce future costs associated with removal and disposition.

EFFECTIVE DATE: August 5, 1992.

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SUPPLEMENTARY INFORMATION: A proposed rule to amend 43 CFR part 4700 to allow decisions on gathering excess wild free-roaming horses and burros from public or private lands to be placed in full force and effect pending appeal was published in the Federal Register on July 2, 1991. Public comments were invited for 30 days, until August 1, 1991. The BLM received 15 letters concerning the proposed rule during the 30-day public comment period. Three of the letters came from private individuals, nine from associations, and three from State government agencies. Of the 15 letters received, 8 expressed opposition and 5 expressed support for the proposed rule. The remaining two letters contained no comments addressing provisions of the proposed rule. The specific comments contained in these letters and the responses to the comments are provided below.

Two comments suggested that the proposed rule is in conflict with the Wild Free-Roaming Horse and Burro Act (the Act). Neither comment indicated in what way the rule was inconsistent with the Act. Therefore, it is difficult to respond directly to these comments. However, the Act states: "Where the Secretary determines * * * that an overpopulation exists on a given area of public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels." The rule provides a mechanism for complying with this section of the Act by assuring that excess animals can be removed immediately when that action is needed to protect individual excess animals or the habitat of the remaining population.

Several comments suggested that the BLM already has the authority to expedite the removal of excess animals, when needed, under provisions of 43 CFR 4.21(a). This section of the Code of Federal Regulations (CFR) states "a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director (Office of Hearings and Appeals) or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately." Although this provision allows the Director of the Office of Hearings and Appeals, or the IBLA, to place a decision to remove animals in full force and effect, the time needed to file a brief explaining the need for an expedited decision and receiving a decision from the Director or the IBLA normally exceeds 2 months. In emergency situations, a delay of 2 months or more could cause severe or permanent injury to the animals and/or the habitat. In addition, the authority for determining the need for placing a decision in full force and effect should rest with the BLM field official who is accountable for the action and is in the best position to judge the need for immediate action to remove excess animals to protect the health of both the

removed and remaining animals and to maintain a thriving ecological balance. For these reasons, the provisions of 43 CFR 4.21(a) are not an adequate substitute for the proposed regulations. The comment is not adopted in the final rule.

Several comments suggested the proposed rule would invalidate or inhibit the appeals process. The proposed rule would in no way reduce the public's opportunity to file an appeal nor would it increase the appellant's burden of proof to show why the agency's action was incorrect. Nonetheless, unless the appellant is granted a stay of the agency's decision, the excess animals would normally be removed prior to a ruling on the merits of the appeal by the Interior Board of Land Appeals (IBLA). If, upon appeal, the IBLA were to subsequently rule that a BLM removal action was incorrect, there are at least two courses of action for mitigating the effects of erroneously removing animals. First, a similar number of animals from another herd area could be moved to the area where animals were removed in error. Second, as suggested by the IBLA in its decision in Animal Protection Institute of America, et al, 118 IBLA 63 (1991), future removals could be deferred until the herd size increases through normal reproduction and population levels again are consistent with maintenance of a thriving natural ecological balance. Thus even if a BLM full force and effect removal action was invalidated by the IBLA, an appellant would still receive the full benefit from filing an appeal.

However, even if an appeal is given expedited review, an IBLA ruling in favor of the BLM can come 6 months after the BLM removal decision is issued. In such cases, BLM's removal of the excess animals may not be completed before another generation of foals is added to the wild horse population. Resulting delays increase the Government's cost to remove the excess animals and allow an additional season of overgrazing to occur before corrective action can be taken to re-establish a thriving natural ecological balance. Such costs cannot be recovered, and the damages can only be mitigated at great additional cost.

Two comments suggested that the proposed rule will require an appellant to file a Petition for a Stay of Decision with the IBLA whenever the appellant wishes to prevent removal of animals after the BLM has placed a decision to remove excess wild horses or burros in full force and effect. We agree that the proposed rule would require filing a Petition for Stay of a removal decision if the appellant wished to stop a planned removal action prior to the IBLA's final decision on the merits of the appeal. Because the damage to the animals or their habitat and the extra cost to the Government caused by a delay in removing excess animals far outweigh the costs of filing a Petition for Stay, requiring the appellant to file a Petition for Stay of a removal decision with the IBLA is both reasonable and in the public interest.

Another comment stated that, because IBLA rules do not provide for expedited consideration of a Petition for a Stay of Decision, most removal actions would be completed before a Stay could be issued. We agree that this is a possibility. However, even if the IBLA were to ultimately find the BLM removal decision to be incorrect, animals that were removed in error could either be replaced with animals from another herd area having excess animals or the herd could be allowed to increase through normal reproduction until the population again reached a thriving natural ecological balance. Consequently, no permanent or significant damage would result from failure of the IBLA to hear a Petition for Stay of a Decision prior to completion of a removal action. Nonetheless, if a Petition for Stay were denied by the IBLA, the appellant could request a judicial review of the BLM's removal action in Federal court.

Three of the comments suggested that the proposed rule would encourage the BLM to remove animals without proper data and justification. In 1988 and 1989, several BLM wild horse and burro removal plans in Nevada were appealed to the IBLA. In their two rulings partially overturning the BLM removal decisions, the IBLA concluded that BLM has "not established that removal is warranted in order to restore the range to a thriving natural ecological balance and prevent a deterioration of the range threatened by an overpopulation of wild horses." Animal Protection Institute of America, 109 IBLA 112, 115 (1989), and Animal Protection Institute of America, 116 IBLA 239, 243 (1990). The IBLA rulings outlined the requirements the BLM must satisfy for proper justification of removal decisions. The requirements outlined in these two rulings have been incorporated in BLM policy and all subsequent BLM decisions have been consistent with this policy. In addition, the IBLA has upheld all of the BLM removal decisions on which appeals have been filed since November 1990. As a result, we believe the present policy requiring current resource data be used to support removal decisions is sound and in full compliance with the Act. This policy will continue to be applied for all removal decisions whether or not the decisions are placed in full force and effect. For that reason, we disagree with the comments suggesting that the proposed rule will encourage removal of wild horses and burros without data and justification.

One comment suggested that the proposed rule should include a requirement to conduct inventories and monitoring. The present regulations state at 43 CFR 4720.1, "Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order. * * *" Consequently, the suggested requirement exists in the current regulations. We agree that data collection is needed to determine if a thriving natural ecological balance is being maintained and if there are excess wild horses or burros. Because of its importance, this requirement is being further defined and expanded in the proposed revision of the BLM Management Considerations Manual Section 4710. Thus, there is no need to incorporate further requirements for data collection in this final rule.

Another comment suggested adding a requirement that full force and effect wild horse or burro removal decisions be issued as multiple-use decisions incorporating all other grazing uses such livestock and wildlife found in an area. We agree to a certain extent. When decisions about forage and habitat usage are being made for a herd area, a single multiple-use decision addressing all proposed forage and habitat changes for each major species should be issued rather than individual decisions for each grazing species. Guidance concerning this process is included in the latest revision of the BLM Management Considerations Manual, section 4710. Under this guidance, decisions that propose changes in the forage or habitat use of more than one species will almost always be issued as multiple-use decisions. However, in many circumstances where full force and effect decisions are contemplated, a multiple-use decision would not be appropriate. The BLM expects that many wild horse or burro removal decisions placed in full force and effect will be issued in response to emergency situations such as sudden habitat loss (fire, deep snow, drought), when other grazing species are not using the area, or when data indicate that removal of only wild horses or burros is needed to re-

establish a thriving natural ecological balance. Therefore, the final rule does not require wild horse or burro removal decisions placed in full force and effect to be issued as multiple-use decisions.

Three comments suggested that the final rule should incorporate criteria developed by the BLM Nevada State Office for declaring an emergency, which would require placing decisions for removal of wild horses or burros in full force and effect. We agree criteria should be established for designation of emergency conditions. However, these criteria are more appropriate for inclusion in the BLM's Manuals and Handbooks. For that reason, the final rule contains no criteria for declaring an emergency. While the Nevada State Office guidelines for declaring an emergency are very good, they are not all-inclusive and do not include criteria for placing decisions in full force and effect when no emergency exists. As indicated in the preamble to the proposed rule, the BLM intends to place decisions to remove wild horses or burros in full force and effect in situations where damage to public or private land is expected to be significant or when failure to remove animals expeditiously will cause an unacceptable expenditure of public funds. The criteria for assessing the need for immediate removal of excess animals under these circumstances or emergency conditions will be issued as draft policy prior to being incorporated in the BLM directive system. Nonetheless, it is not possible to anticipate all conditions that may require immediate removal of wild horses or burros. Therefore, after the final guidance has been issued, local managers will have the authority to determine the need for placing in full force and effect decisions to remove excess wild horses or burros.

Two comments suggested that the increased cost of removals associated with delays caused by appeals to removal plans is not sufficient reason for implementation of the proposed rule. The ability to remove excess wild horses and burros quickly, in accordance with the proposed rule, provides the public at least the following major benefits: (1) Protects the health and welfare of wild horses, (2) protects the habitat from damage caused by overgrazing, (3) reduces the cost of removal and placement of excess wild horses. At the present rate of appeals being filed and funding capability the proposed rule could prevent delays in removal of over 5,000 animals annually. Assuming that an appeal can be resolved in one year or less, the cost of removal of 5,000 animals would increase by at least $277,000 due to the increased number of animals that would have to be removed the following year. In addition to the increased cost of removal, the Government would be faced with an increased number of animals to prepare for adoption, ship to adoption centers, adopt, and convey title. Using the average adoption cost in fiscal year 1991, placing the additional animals would cost at least $660,000. A Government savings of almost $1,000,000 annually is a major benefit resulting from implementation of the proposed regulations. If resolution of an appeal required more than one year, savings would be substantially large. While the cost savings may by themselves not be sufficient justification for the proposed rule, they are certainly a major benefit or implementing the rule.

Two comments suggested amendments of the proposed rule to clarify the Secretary's authority concerning removal of wild horses or burros from private lands. One comment suggested that full force and effect removal decisions be limited to situations when the "owner(s) of these private lands have requested removal of horses from their lands pursuant to section 4 of Public Law 92–195, and have stated in writing that they are in agreement with the removal decision, if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship as determined in the Land Use Plan." Requiring the Secretary to obtain a written agreement from the landowner prior to removal of wild horses or burros from private land would be contrary to the Act which gives the Secretary sole authority to manage wild horses and burros. However, if removal operations require entry upon private lands, the BLM will first secure the landowner's permission.

On the other hand, the second comment suggested that authority to remove wild horses or burros from private land was not needed because the present regulation (Section 4720.2–1) "grants the Secretary the authority to immediately remove horses from private lands." We agree that the Secretary has the authority to remove wild horses and burros from private lands. The proposed rule was written to state clearly that decisions could be placed in full force and effect to remove animals from private lands when necessary to protect the animals or to maintain a thriving natural ecological balance on the public lands without the landowner's permission or a written request to remove wild horses or burros. Such removals would be accomplished without entry of private land by helicopter herding. As stated in the previous paragraph, if transporting the animals or conducting capture operations requires BLM presence on private land, BLM will first obtain permission from the landowner.

An editorial change has been made in paragraph (c) added in the proposed rule to make it clear that the criteria stated in the paragraph relate to removal of horses and burros rather than to placing such removal in full force and effect pending appeal. Also, a new § 4700.0–9 is added in the final rule to contain the information formerly stated in the "Note" at the beginning of part 4700. This addition is nonsubstantive and does not add any regulatory requirements.

The principal author of this final rule is Vernon R. Schulze of the BLM Division of Wild Horses and Burros, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Reducing delays in removals of excess animals will result in smaller numbers of animals requiring removal and adoption, and concomitant savings by both the United States and members of the adopting public. Based on average delays and associated population increases, and average annual removals of 5,000 animals, annual savings would be at least $1,000,000. In no case could the effect on the economy approach $100,000,000. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. No private property would be affected without permission. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not because a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* However, the collections of information contained in Group 4700 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Animal welfare, Intergovernmental relations, Penalties, Public lands, Range management, Reporting and recordkeeping requirements, Wild horses and burros, Wildlife.

For the reasons stated in the preamble, and under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for part 4700 is revised to read as follows:

Authority: 16 U.S.C. 1331–1340, 43 U.S.C. 1701 *et seq.*, 18 U.S.C. 47, 43 U.S.C. 315.

2. Section 4700.0–9 is added to read as follows:

§ 4700.0–9 Collections of information.

(a) The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042. The information will be used to permit the authorized officer to remove wild horses and burros from private lands and to determine whether an application for adoption of and title to wild horses or burros should be granted. Response is required to obtain benefits under 16 U.S.C. 1333 and 1334.

(b) Public reporting burden for this information is estimated to average 0.1652 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0042, Washington, DC 20503.

3. Section 4770.3 is amended by adding paragraph (c) to read as follows:

§ 4770.3 Administrative remedies.

* * * * *

(c) The authorized officer may place in full force and effect decisions to remove wild horses or burros from public or private lands if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship. Full force and effect decisions shall take effect on the date specified, regardless of an appeal. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part.

Dated: June 5, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–15628 Filed 7–2–92; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–56; RM–7551]

Radio Broadcasting Services; Bay City and Edna, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 269C1 for Channel 241C2 at Bay City, Texas, and modifies the construction permit of Station KXGJ, Bay City, Texas, to specify operation on Channel 269C1. In order to accommodate this upgrade, this document also substitutes Channel 241A for Channel 269A at Edna, Texas. See 57 FR 11058, published April 1, 1992. The reference coordinates for the Channel 269C1 allotment at Bay City, Texas are 28–45–58 and 96–04–11. The reference coordinates for the Channel 241A allotment at Edna, Texas are 28–58–42 and 96–38–48. With this action, this proceeding is terminated.

DATES: *Effective:* August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–56, adopted June 17, 1992, and released June 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 241C2 and adding Channel 269C1 at Bay City, and removing Channel 269A and adding Channel 241A at Edna.

#2638

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. [redacted], I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of California's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 13, 1992.

Daniel W. McGovern,

Regional Administrator.

[Doc. 92-17404 Filed 7-22-92; 8:45 am]

[redacted] CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2740

[AA-320-4212-02 24 1A; Circular No. 2638]

RIN 1004-AA73

Recreation and Public Purposes Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends existing regulations to implement the Recreation and Public Purposes Amendment Act of 1988 (Public Law 100-648) (hereafter referred to as the Act). This Act amended section 3 of the Act of June 14, 1926 to provide special procedures for conveyances of public lands for solid waste disposal or related purposes. The Act authorizes the Secretary of the Interior to make permanent conveyances, without the standard reverter provision, of public lands when such lands are to be used for the express purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance. This is a departure from the present requirement that the United States retain a reversionary interest in lands conveyed under the Recreation and Public Purposes Act.

EFFECTIVE DATE: 60 legislative days from date of publication.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Paugh (202) 208-4200.

SUPPLEMENTARY INFORMATION: The Act, which became effective on November 10, 1988, terminated authority for the Secretary of the Interior to lease public land for solid waste disposal purposes. It specifically authorizes the Secretary to: (1) Convey public land by patent for new solid waste disposal sites with a limited reverter, (2) convert existing leases into patents without a reverter provision, and (3) remove the reverter provision from existing patents.

Because of Federal liabilities associated with leased sites, it is the policy of the Bureau of Land Management (BLM) to work with local communities to patent public lands for new disposal sites. Existing leased sites would be closed and retained in Federal ownership. If, however, the community expresses an interest in obtaining a patent to an existing site and no new disposal sites are available, the authorized officer may convey the site, but only after all the requirements contained in this final rule have been met and with approval of the Director, BLM. Implementation of this rule will enable State and local governments that are in need of sanitary landfills to acquire sites at low cost. It would also reduce the potential for indiscriminate dumping of solid waste and hazardous substances on public land, and place primary responsibility for oversight and maintenance with the States and the Environmental Protection Agency (EPA)—entities that have the authority, staffs, and necessary expertise to regulate solid waste disposal facilities.

On November 29, 1991, the BLM published a proposed rule in the **Federal Register** (56 FR 61104), with a 30-day comment period. The rule incorporated provisions by which the authorized officer may convey public land for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance. Included in the proposed rule were requirements that pertained to: land use planning, land classification, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), site investigation and State certification, and patent provisions. The proposed rule also made reference to the final EPA regulations that were published in the **Federal Register** (56 FR 50978) on October 9, 1991. These regulations established criteria for municipal solid waste landfills including location restrictions, facility design and operations, groundwater monitoring, corrective action measures, conditions for closure and post-closure use, and requirements for financial responsibility.

In response to the proposed rule published on November 29, 1991, the BLM received comments from 19 sources including: 1 individual, 1 business, 1 industry association, and 16 Governmental entities.

The comments relating directly to the proposed rule and the corresponding responses are discussed as follows. Editorial and grammatical corrections have been made as necessary.

General Comments

Three commenters questioned the BLM policy of retaining leased sites in Federal ownership and asked why the conveyance of existing sites will only be considered if no new disposal sites are available. The BLM has been advised by the Office of the Solicitor, Department of the Interior, that the United States is potentially liable for any problems that may occur at existing sanitary landfills under lease or at leased landfills that would be conveyed out of Federal ownership. Therefore, to minimize Federal liabilities, the BLM would prefer to close and retain the leased sites in Federal ownership and work with local governments in patenting new disposal sites.

One commenter asked if the proposed rule applied to landfills on National Forest lands. The Act and its implementing regulations apply only to public lands administered by the Department of the Interior.

One commenter requested clarification of the terms "hazardous substances" and "household hazardous waste". The BLM did not use the latter term in the proposed rule. The Act specifically authorizes the disposal of solid waste including hazardous substances. The definitions of these terms are found in EPA regulations 40 CFR 261.2 and 302.3, respectively. Household waste, as defined under 40 CFR 261.4, is a component of solid waste and is authorized for disposal under the Act. Neither the Act nor the current regulations specifically authorize the

disposal of permanent or long-term hazardous wastes as defined under 40 CFR 261.3. However, some hazardous wastes such as lawn care and gardening products, discarded paints, and household cleaners are commonly deposited with household wastes or have been deposited from conditionally exempt small quantity generators, as provided for in 40 CFR 261.5. Generally, such wastes would not be found in concentrations sufficient to threaten human health and the environment.

One commenter expressed concern that the proposed rule could apply to oil and gas drilling and production pits. The Recreation and Public Purposes Act only grants authority to the Secretary of the Interior to convey public lands for recreational and public purposes. Qualified applicants under the Act include Federal and State agencies, county and city governments, and nonprofit corporations and associations. The provisions of this rule only pertain to solid waste disposal sites including municipal landfills that would be owned and operated by governmental entities. The provisions of this rule would apply to oil and gas operations only to the extent that exploration and production wastes are disposed at municipal landfills and such wastes qualify as solid wastes or hazardous substances as defined under 40 CFR 261.2 and 302.3, respectively.

Specific Comments

Price

One commenter stated that the provision in § 2741.8(d) that disallows any adjustment in the sale price of public land for inclusion of the limited reverter was confusing and that the existing provisions under § 2741.8 adequately address the pricing requirements. The BLM agrees with the commenter and the provision is removed from the rule.

Site Investigation

One commenter expressed opposition to § 2743.3(a)(3) which requires the lessees to reimburse the Federal Government for the costs of investigating existing sites prior to their transfer out of Federal ownership. Since lessees are the primary beneficiaries of obtaining a patent to existing sites, BLM considers the cost reimbursement provision to be reasonable. In the event that investigative costs place an undue hardship on local governments, the BLM may provide financial assistance.

With regard to the requirement under § 2743.3(a)(3)(iv), one commenter requested clarification as to the standards and responsibility for costs associated with the analysis of soil, water, and air. The commenter also recommended that the regulations be more flexible by allowing local agencies to determine the need for analysis. This provision of the regulations requires that an "appropriate" analysis of soil, water, and air be completed as part of the site investigation. The use of the term "appropriate" is intended to allow the BLM authorized officer flexibility in determining the level and standards of investigation, in consultation with EPA, State and local government officials. The requirements and associated costs for investigating leased disposal sites may vary depending on site-specific factors such as climate, topography, geologic strata, soil types, surface and ground water characteristics, and the type and amount of waste materials deposited at the site.

The same commenter requested clarification as to the applicability of EPA regulations governing solid waste disposal in relationship to this rule and the site investigation requirement specified under § 2743.3(a)(3)(iv). The EPA regulations apply to all new, existing, and lateral expansion of solid waste landfills that receive waste on or after October 9, 1993. This would include existing landfills that are leased or disposal sites that are conveyed under the authority of the Recreation and Public Purposes Act. If the landfill units stop taking waste on or before October 9, 1991, the EPA requirements do not apply. If the units receive waste after October 9, 1991, but stop taking waste before October 9, 1993, the landfills are exempt from all EPA requirements except the final cover requirements specified under 40 CFR 258.60(a) or (b). Small landfill owners or operators that dispose of less than 20 tons of municipal waste per day, based on an annual average, are exempt from EPA design, ground-water monitoring, and corrective action requirements so long as there is no evidence of ground-water contamination from the landfill and the unit serves: (1) A community where surface transportation is interrupted for at least three consecutive months preventing access to a regional waste management facility, or (2) a community that has no practical waste management alternative, and the landfill is located in an area that receives no more than 25 inches of precipitation a year. These exemptions do not apply to this rule. The BLM will require that site investigations be conducted on all existing and new disposal sites prior to the conveyance of public lands out of Federal ownership.

Two commenters recommended that the degree of threat should be specified in § 2743.3 (a)(4), (a)(5), and (b) by revising the language to read "* * * contents of the disposal site do not pose a significant threat to human health and environment." The use of "significant" is subjective and how the term will be applied and interrupted would vary among site investigators and reviewers. Therefore, this suggestion was not adopted.

State Certification

Several comments were received on the provisions in §§ 2743.2(a)(7) and 2743.3(a)(5) of the rule which require State certification of investigative findings. One commenter recommended that conveyances of public land for solid waste disposal proceed without State agency involvement because the certification was unnecessary and cost prohibitive. Because of the concern for public health and in light of the recently promulgated regulations by EPA that direct the States to conduct their own solid waste program in accordance with new Federal guidelines, the certification prior to the transfer of public lands to local governments is reasonable and of benefit to the States and Federal Government in terms of reducing Federal and State liabilities in the event of future contamination disputes.

Another commenter recommended that the BLM should obtain State input in establishing the conditions of the site investigation and that financial assistance be provided in support of State certifications due to increased work outputs. As stated earlier in the preamble, the BLM fully intends to seek State input in determining the standards of investigation and may provide financial assistance to local governments if the costs of investigation pose an undue hardship. However, the rule does not provide for appropriation of Federal funds to support States in their review of investigative findings and certifications thereof.

A third commenter stated that the Federal Government has no authority to require the States to review the investigation reports and produce a certification of any kind, except in cases where the Federal Government conditions the payment of Federal funds to State agencies upon the performance of such tasks. The BLM considers the certification to be a discretionary action on the part of the States. Sections 2743.2(a)(7) and 2743.3(a)(5) of the rule were amended to clarify that it is the applicant's responsibility to obtain the certification.

One commenter stated that § 2745.3(a)(5) implied a concurrent State investigation. There is no intent to have

the State conduct a separate investigation. This provision and the provision under § 2743.2(a)(7) require the State agencies certify that they have reviewed documents submitted as part of the site investigation and concur with the BLM authorized officer as to the assessment concerning hazardous substances.

One commenter suggested that § 2743.3(a)(5) of the rule establish a 60-day time limit for the States to provide certification of investigative findings. The BLM would prefer to establish the review periods on an informal basis because the time necessary to review and certify the investigative reports may vary depending on the amount of technical data, environmental analyses, and support documentation completed for an existing site. Therefore, this suggestion was not adopted.

Patent Provisions

In reference to § 2743.2–1(b) of the rule, one commenter stated that the State should have a hold harmless provision in place. This provision is subject to State law and not appropriate for inclusion into Federal patents.

One commenter stated that the investigation "as of the date of patent" specified in §§ 2743.2–1(c) and 2743.3–1(c) was good in theory but not practical in terms of obtaining a State certification on the same day as the patent is issued. The BLM agrees with this assessment and the provisions are removed from the rule.

Three commenters stated that the 5-year limitation specified in § 2743.2–1(d) was unrealistic because most landfills are designed for a longer period of time due to the high costs of design, environmental evaluations, construction, and permitting. The intent of the Act is to allow local governments to obtain a tract of public land that is of sufficient size to accommodate their landfill needs for periods longer than 5 years. The BLM has tied the 5-year statutory limitation to the plan and schedule of development. Additional guidance on the application of this provision will be provided to the BLM's authorized officers via internal manuals.

Upon publication of this document in the Federal Register, the Bureau of Land Management will submit copies of this final rule to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Section 4(a) of the Act allows the committees 60 legislative days to review the rulemaking.

The principal authors of this final rule are Mike Ford of the Division of Lands and Realty, BLM Washington Office (WO), and Mike Pool of the Division of Legislation and Regulatory Management (WO), with assistance from the Office of the Solicitor, Department of the Interior.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, this rule will not cause a taking of private property under Executive Order 12630.

List of Subjects in 43 CFR Part 2740

Intergovernmental relations, Public lands—sale, Recreation and recreation areas, Reporting and recordkeeping requirements.

Under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), part 2740, Group 2700, subchapter B, chapter II of title 43 of the Code of Federal Regulations is amended as follows:

Dated: June 5, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

1. The authority citation for part 2740 is revised to read as follows:

Authority: 43 U.S.C. 869 *et seq.*, 43 U.S.C. 1701 *et seq.*, and 31 U.S.C. 9701.

Subpart 2740—Recreation and Public Purposes Act: General

2. Section 2740.0–3 is amended by adding paragraph (c) to read as follows:

§ 2740.0–3 Authority.

* * * * *

(c) Section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes Amendment Act of 1988, authorizes the Secretary of the Interior to convey public lands for the purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance, with special provisions relating to reversion of such lands to the United States.

3. Section 2740.0–5 is amended by adding paragraphs (f) and (g) to read as follows:

§ 2740.0–5 Definitions.

* * * * *

(f) *Hazardous substance* means any substance designated pursuant to Environmental Protection Agency regulations at 40 CFR part 302.

(g) *Solid waste* means any material as defined under Environmental Protection Agency regulations at 40 CFR part 261.

4. Section 2740.0–6(a) is amended by removing the period at the end of the last sentence and adding a comma and phrase to read as follows:

§ 2740.0–6 Policy.

(a) * * * except for conveyances under subpart 2743 of this title.

5. Section 2740.0–7 is amended by adding paragraph (d) to read as follows:

§ 2740.0–7 Cross references.

* * * * *

(d) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance are contained in subpart 2743 of this chapter.

5a. Section 2740.0–9 is added to read as follows:

§ 2740.0–9 Information collection.

The collection of information contained in part 2740 of Group 2700 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0012. This information will be used to determine the suitability of public lands for lease and/or disposal to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes. Responses are required to obtain benefits in accordance with the Recreation and Public Purposes Act.

Public reporting burden for this information is estimated to average 47 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (770), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240; and the Paperwork Reduction Project (1004–0012), Office of Management and Budget, Washington, DC 20503.

Subpart 2741—Recreation and Public Purposes Act: Requirements

§ 2741.5 [Amended]

6. Section 2741.5 is amended by removing existing paragraph (i) and redesignating paragraph (j) as new paragraph (i).

7. Part 2740 is amended by adding subpart 2743 to read as follows:

Subpart 2743—Recreation and Public Purposes Act: Solid Waste Disposal

Sec.
2743.1 Applicable regulations.
2743.2 New disposal sites.
2743.2–1 Patent provisions for new disposal sites.
2743.3 Leased disposal sites.
2743.3–1 Patent provisions for leased disposal sites.
2743.4 Patented disposal sites.

Subpart 2743—Recreation and Public Purposes Act: Solid Waste Disposal

§ 2743.1 Applicable regulations.

Unless the requested action falls within the provision of § 2743.2(b), applications filed or actions taken under this subpart shall be subject to all the requirements set forth in subpart 2741 of this chapter except §§ 2741.6 and 2741.9.

§ 2743.2 New disposal sites.

(a) Public lands may be conveyed for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance subject to the following provisions:

(1) The applicant shall furnish a copy of the application, plan of development, and any other information concerning the proposed use to all Federal and State agencies with responsibility for enforcement of laws applicable to lands used for the disposal, placement, or release of solid waste or any hazardous substance. The applicant shall include proof of this notification in the application filed with the authorized officer;

(2) The proposed use covered by an application shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(3) Conveyance shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title;

(4) The applicant shall warrant that it will indemnify and hold the United States harmless against any liability that may arise out of any violation of Federal or State law in connection with the use of the lands;

(5) The authorized officer shall investigate the lands covered by an application to determine whether or not any hazardous substance is present. The authorized officer will require full reimbursement from the applicant for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to:

(i) A review of available records related to the history and use of the land;

(ii) A visual inspection of the property; and

(iii) An appropriate analysis of the soil, water and air associated with the area;

(6) The investigation conducted under paragraph (a)(5) of this section must disclose no hazardous substances and there is a reasonable basis to believe that no such substances are present; and

(7) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that no hazardous substances are present on the property.

(b) The authorized officer shall not convey public lands covered by an application if hazardous substances are known to be present.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

§ 2743.2–1 Patent provisions for new disposal sites.

For new disposal sites, each patent will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws;

(c) Except as provided in paragraph (e) of this section, the land conveyed under § 2743.2 of this part shall revert to the United States unless substantially used in accordance with an approved plan and schedule of development on or before the date five years after the date of conveyance;

(d) If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon; and

(e) No portion of the land covered by such patent shall under any circumstance revert to the United States if such portion has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

§ 2743.3 Leased disposal sites.

(a) Upon request by or with the concurrence of the lessee, and only with the express approval of the Director, Bureau of Land Management, the authorized officer may issue a patent for those lands covered by a lease, or portion thereof, issued on or before November 9, 1988, that have been or will be used, as specified in the plan of development, for solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance, subject to the following provisions:

(1) All conveyances shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(2) Conveyances shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title.

(3) The authorized officer shall investigate the lands to be included in the patent to determine whether they are contaminated with hazardous substances. The authorized officer will require full reimbursement from the lessee for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the

applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to the following:

(i) Review of all records and inspection reports on file with the Bureau of Land Management, State, and local agencies relating to the history and use of the lands covered by a lease and any violations and enforcement problems that occurred during the term of the lease;

(ii) Consultation with the lessee and users of the landfill concerning site management and a review of all reports and logs pertaining to the type and amount of solid waste deposited at the landfill;

(iii) A visual inspection of the leased site; and

(iv) An appropriate analysis of the soil, water and air associated with the area;

(4) The investigation conducted under paragraph (a)(3) of this section must establish that the involved lands contain only those quantities and types of hazardous substances consistent with household wastes, or wastes from conditionally exempt small quantity generators (40 CFR 261.5), and there is a reasonable basis to believe that the contents of the leased disposal site do not threaten human health and the environment; and

(5) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that the contents of the leased disposal site in question do not threaten human health and the environment.

(b) The authorized officer shall not convey lands identified in paragraph (a) of this section if the investigation concludes that the lands contain hazardous substances at concentrations that threaten human health and the environment.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

§ 2743.3-1 Patent provisions for leased disposal sites.

A patent for a leased disposal site will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws; and

(c) No portion of the land covered by such patent shall under any circumstance revert to the United States.

§ 2743.4 Patented disposal sites.

(a) Upon request by or with the concurrence of the patentee, the authorized officer may renounce the reversionary interests of the United States in land conveyed on or before November 9, 1988, and rescind any portion of any patent or other instrument of conveyance inconsistent with the renunciation upon a determination that such land has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

(b) If the patentee elects not to accept the renunciation of the reversionary interests, the provisions contained in §§ 2741.6 and 2741.9 shall continue to apply.

[FR Doc. 92-17309 Filed 7-22-92; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

#2639

hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 30, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.142, by adding new paragraph (k), to read as follows:

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(k) A tolerance that expires on December 1995 is established for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) resulting from the preplant use of 2,4-D ester or amine in or on the raw agricultural commodity as follows:

Commodity	Parts per million
Soybeans	0.1

[FR Doc. 92-19653 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[WO-230-02-6310-24 1A; Circular No. 2639]

RIN 1004-AB56

Sales Administration; Contract Modification, Extension, Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of regulations on sales administration and contract modification, extension, and assignment. These regulations are being amended to provide more fairness and flexibility in granting timber sale contract extensions when unusual circumstances beyond the control of a purchaser prevent completion of the contract by its expiration date. The rule provides the contracting officer authority to extend the time for cutting and removal on timber sale contracts without reappraisal in some specific situations. The rule is needed because government actions have prevented some contractors from timely completion of contracts, and requiring such contractors to pay higher, reappraised prices when delays were occasioned by the government itself is unfair.

EFFECTIVE DATE: July 23, 1991.

ADDRESSES: Suggestions or inquiries should be sent to: Director (230), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bob Bierer, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. The average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there are many factors outside the control of timber purchasers that limit the operating time on a contract. These include court injunctions, weather conditions, fire closures, and actions taken by the Federal Government to protect cultural and biological resources. Under the current regulations, there are no provisions that extend timber sale contracts without reappraisal, when delays are caused by any of the above factors. This final rule is intended to provide more fairness and flexibility in granting timber sale contract extensions, by providing for granting of extensions without reappraisal in certain circumstances.

The Bureau published a proposed rule on July 3, 1990 (55 FR 27477). After the proposed rule was published the northern spotted owl was listed under the Endangered Species Act. This listing has made it necessary for the BLM to stop or delay operations on many ongoing timber sale contracts while conferences with the Fish and Wildlife Service were held to determine what impact on the spotted owl these sales might have. These delays in some cases may make it impossible for the purchaser to complete the contracts in time for cutting and removal specified in the timber sale contract. Under the existing regulations, the BLM could not extend the time for cutting and removal on these contracts without reappraisal. There has been a rapidly rising market for stumpage in the last two years. Therefore, reappraisal of these timber sale contracts would cause the price for the timber to increase significantly. In effect, the purchaser would be penalized for not completing the contracts on time when completion was prevented by the Government. This is not a fair way to deal with the BLM's timber sale purchasers. To pursue such a course would result in much litigation between the BLM and timber sale purchasers.

Because of the additional delay resulting from the spotted owl listing and public comments received on the proposed rule, the BLM expanded the proposed rule to address other delays caused by actions of the Federal Government. A reproposed rule was issued to allow the public an opportunity to comment on the changes from the original proposed rule. The reproposed rule was published in the Federal Register on June 25, 1991 (56 FR 28850). The comment period was limited to 10 days because several timber contracts were scheduled to expire and performance had been impossible through no fault of the timber purchasers. Some comments on the reproposed rule indicated that they believed more time was needed for public review and comment. Because of the need to extend timber contracts that would expire between July 22 and

September 30, 1991, and to prevent penalizing purchasers for circumstances caused by the Federal Government, an interim rule was issued to take effect upon publication but allow an additional 60 days to comment after the effective date.

An interim rule was published on July 23, 1991 (56 FR 33830) with a request for comments. The comment period expired on September 23, 1991. The BLM received two letters containing comments on the interim rule. One letter was from an association and the other was from a law firm. The specific comments contained in these letters and responses to the comments are listed below:

1. A comment suggested that the rule should allow extensions that exceed one year in length. Natural catastrophes and disasters to manufacturing facilities may warrant extensions in excess of one year. The rule does provide for additional extensions upon written request by the purchaser. If, after a one year extension, a purchaser still needs more time, such purchaser may apply for an additional extension. This provision is found in the last sentence of § 5473.4(a).

2. A comment suggested that the final rule should include the possibility of delays occasioned by requests from State or local governments and elected officials. A similar comment suggested that an additional paragraph be added to subsection 5473.4(c) to cover unspecified direct interruptions in operations caused by government entities other than the Federal Government. Another comment suggested that § 5473.4(c)(5) should included closures by local agencies for any reason, in addition to fire, as justification for contract extension without reappraisal. It is unlikely that any delay, other than for fire closures, in harvesting timber from Federal lands would be requested or caused by State or local governments or elected officials. This suggestion was not adopted.

3. A comment suggested that, in cases of delays caused by the Government, the BLM should keep track of the lost time and should automatically award extensions. The mere fact that there is a delay caused by the Government does not necessarily mean that an extension of time is needed. There may be more than one delay caused by the Government in the life of the contract and the length of the delay may be very short. Automatic extensions every time there is a delay would cause unwarranted amounts of administrative work for the BLM. This rule is intended to provide a means for allowing additional time in those cases where there is a compelling need for such additional time. The Purchaser is in the best position to communicate such need to the BLM. This suggestion was not adopted.

4. A comment suggested that purchasers should be allowed extensions to harvest salvage timber from lands under any ownership, not just Federal lands. There is adequate logging capacity—equipment and personnel—operating on State and private lands to meet any need to harvest salvage timber from those ownerships by redirecting logging activities within those ownerships. Such a provision would be difficult for the BLM to administer because it has no control over harvesting activity on State and private lands. The BLM's primary responsibility is for the management of the timber resources on BLM administered lands. This suggestion was not adopted.

5. A comment suggested that the waiver of reappraisal for contract extensions should be extended to cover unusually severe circumstances, including, but not limited to, flood, landslide, or act of God. The comment stated that the interim rule limited remedy for these circumstances to an extension of 30 days and that there are unusual circumstances clearly beyond the purchaser's control that delay operations for periods exceeding 30 days without the fault or negligence of the purchaser. The regulations provide for extensions of up to one year, with provision for additional extension, for all circumstances that are beyond the purchaser's control and without his fault or negligence except market fluctuations. The regulations do require reappraisal at the time of the extension if the delay was not imposed by the United States or any State government agency. The rationale for this provision is that the purchaser should not be entitled to any windfall profits due to a rising market in situations where the Government was not the cause of such delay. The comment also stated that the revenue to the Government would be reduced by requiring the purchaser to consider costs that could result from acts of God at the time of bidding. The risk from acts of God have always been a consideration in bidding on BLM timber sale contracts, and this rule will not make any change in the amount of risk.

6. A comment suggested that the requirement for a showing of a "good faith effort" in § 5473.4(c) is vague. The comment recommended changing the language to "on a showing that the purchaser performed as the average prudent operator would be expected to perform in a like time period". This comment has merit and the suggested language change was adopted in the final rule.

The final rule published today incorporates many changes suggested in responses to the original proposed rule, the reproposed rule, and the interim rule. Editorial changes have been adopted to make the regulations more clear. The rule provides that an extension may be granted for lost time as a result of: (1) Additional requirements incorporated in contract modifications requested by the Government; (2) delays necessitated by requirements for consultation with FWS under the Endangered Species Act; (3) reviews for cultural resources; (4) court injunctions obtained by parties outside the contract; or (5) fire closures imposed by State agencies. The extensions will provide additional time, during the operating season, equal to time lost as a result of these reasons. The extensions referred to above will be granted without reappraisal.

The rule also provides that short extensions of up to 30 days of operating time may be granted without reappraisal, if the cause for delay in cutting and removal was beyond the purchaser's control and without his fault or negligence.

The principal author of this final rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which nave been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total value of BLM timber contracts may approach $100 million, but the proportion of these that may be subject to extension under this rule is minuscule, and of those that may be subject to extension, most will have been partially performed before the extension is needed. Therefore, the annual effect on the economy will not remotely approach the threshold specified in the Executive Order. There would be no cost increases imposed on the lumber industry, and there would thus be no increases in consumer costs or prices resulting from the rule, and no substantial effects on government agencies or competition. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between business entities based on their size.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

For the reasons stated above, under the authorities stated below, parts 5460 and 5470, Group 5400, subchapter E, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below.

Dated: June 25, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

PART 5460—SALES ADMINISTRATION

1. The authority citation for part 5460 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

§ 5463.1 and 5463.2 [Amended]

2. The amendment to § 5463.1 and the removal of § 5463.2 made by the interim rule published on July 23, 1991 (56 FR 33830) is confirmed as final.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

3. The authority citation for part 5470 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

4. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

5. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the contracting officer may grant an extension of time, upon written request by the purchaser. Such extension will not to exceed one year, and will require an appraisal, if the delay was not imposed by the United States or any State government agency as provided by paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request by the purchaser.

(b) Notwithstanding the provisions of paragraph (a) of this section requiring reappraisal if the delay was not imposed by the United States or any State government under paragraph (c) of this section, the contracting officer may grant an extension of time, without reappraisal, not to exceed enough time to provide 30 days of operating time, if the delay was due to causes beyond the purchaser's control and without his fault or negligence. No additional extensions may be granted without reappraisal under the provisions of this paragraph.

(c) On a showing that the purchaser performed as the average prudent operator would be expected to perform in a like time period prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

(3) Reviews for cultural resource values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) As used in this section, "operating time" means a period of time during the operating season, and "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

(e) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives. The State Director may also waive reappraisal for such extension.

6. Section 5473.4–1 is amended by revising paragraph (a) to read as follows:

§ 5473.4–1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the

contracting officer of the material sold will be in accordance with this section.

* * * * *

[Doc. 92-19683 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB78

Endangered and Threatened Wildlife and Plants; Grizzly Bear; Removal of the Special Rule Allowing a Limited Special Hunt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; removal.

SUMMARY: The U.S. Fish and Wildlife Service removes 50 CFR 17.40(b)(i)(E), the special rule that allows take of grizzly bears through a special hunt in northwestern Montana in order to respond to a memorandum opinion of the U.S. District Court.

EFFECTIVE DATE: This rule is effective on August 19, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, [illegible]312, University of Montana, Missoula, [illegible]ntana 59812.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above) at telephone (406) 329-3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) Endangered Species Program. The Service may prepare special rules providing for the conservation of threatened species including taking prohibitions. The Service published a Grizzly Bear Special Rule (50 CFR 17.40) in 1975 dealing with limiting the number of grizzly bears killed from all human-related causes. This special rule included authorization of a limited special hunt of grizzly bears in northwestern Montana. A revision of this special rule was published in the Federal Register (51 FR 33753) in 1986.

On April 20, 1992, the Service published in the Federal Register (57 FR 14378) a proposed rule to further amend [illegible] special rule by removing the [illegible]horization of the special hunt in [illegible]ontana, and a notice of intent to develop a revised special rule consistent with the Memorandum Opinion of the U.S. District Court, District of Columbia, in *The Fund for Animals, Inc.* v. *Turner*, Civil No. 91-2201(MB) dated September 27, 1991. This opinion declared 50 CFR 17.40(b)(1)(i)(E) to be invalid and enjoined the Service from authorizing the grizzly bear hunt.

Summary of Comments and Recommendations

In the April 20, 1992, proposed rule, all interested parties were requested to submit data or comments on the proposed rule. The comment period closed on May 20, 1992. Press releases were sent to 154 media sources in Montana and Wyoming.

A total of 15 letters of comment on the proposed rule were received. Eight letters expressed opposition to removal of the special hunt authorization and seven letters expressed support for removal of the special hunt authorization. The main issue reiterated in the letters in opposition to the proposed removal was that a regulated hunt would prevent or reduce habituation to people by enforcing the bears' natural wariness of humans. The Service has no substantive data to support or refute this assumption. No other substantive comments were received.

The Service hereby removes 50 CFR 17.40(b)(1)(i)(E) that allows a special hunt of grizzly bears in northwestern Montana. This removal of the authorization of the special hunt in Montana in no way changes the remainder of the Grizzly Bear Special Rule in 50 CFR 17.40(b).

There are no significant changes between the proposed rule published in 57 FR 14378 and this final rule.

National Environmental Policy Act

An environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, was prepared for the 1986 revision (51 FR 33753) of the Grizzly Bear Special Rule. The elimination of the sport hunt of grizzly bears, which is the result of the removal of 50 CFR 17.40(b)(1)(i)(E), was covered under Alternative D of this environmental assessment. This environmental assessment is available to the public from Dr. Chris Servheen (see **ADDRESSES** above).

Author

The primary author of this notice is Patricia Worthing, Region 6 Recovery Coordinator, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, telephone (303) 236-7398.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Removal

For the reasons set out in the preamble, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

§ 17.40 [Amended]

2. § 17.40(b)(1)(i)(E) is removed and reserved.

Dated: July 27, 1992.

Bruce Blanchard,

Acting Director.

[FR Doc. 92-19656 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of closures.

SUMMARY: NMFS is rescinding the closures to directed fishing for Pacific cod in the Central and Eastern Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary to achieve the total allowable catch (TAC) of Pacific cod in these areas.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), August 17, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments are invited on this action until September 14, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska, 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO-610-02-4110-24 1A; Circular No. 2644]

RIN 1004-AC00

Promotion of Development, Reduction of Royalty on Stripper Wells

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends 43 CFR 3103.4–1 relating to waiver, suspension, or reduction of rental, royalty, or minimum royalty. The purpose of this amendment is to establish conditions under which an operator or an owner of a stripper oil well property can obtain a reduction in the royalty rate. This action is necessary in order to encourage operators of Federal stripper oil properties to place marginal or currently uneconomical shut-in oil wells back in production and to provide the economic incentive to increase production by reworking such wells, drilling new wells, and/or by implementing enhanced oil recovery projects. It contains procedures for operators to follow in determining whether a property qualifies and in calculating a royalty rate. It also contains a form with which to notify the Minerals Management Service (MMS) of participation in this program.

EFFECTIVE DATE: September 10, 1992.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, room 501 L Street Building, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653–2127.

SUPPLEMENTARY INFORMATION: A proposed rule for royalty reduction of stripper oil properties was published in the Federal Register on March 11, 1992 (57 FR 8605), with a 30-day comment period. Comments were received from 71 sources, which included 6 industry associations, 41 industrial entities, 10 individuals, and 14 Government entities.

The majority of the comments stated that the proposal was beneficial. Fifty-three—over two-thirds of the respondents—supported the proposed rule. Five of the comments opposed the rule. The remainder primarily requested clarifications.

Several correspondents stated that they did not understand the calculations used to establish the qualifying production rate. However, several other comments stated that the calculations and procedures were simple to understand. No change is made in the final rule, but, to help alleviate confusion, additional guidance concerning the calculations and procedures will be provided at workshops the Bureau of Land Management (BLM) and MMS will conduct upon final implementation of this rule.

Many comments suggested that the proposed rule be expanded to include stripper gas wells. The Department is currently considering a similar royalty rate reduction for stripper gas well properties. However, stripper gas wells are not part of this rule.

Several comments expressed uncertainty whether the proposed rule was applicable to Indian leases. This rule applies only to Federal properties. Indian leases are not considered Federal properties for purposes of this rule, and Indian leases are not covered.

Several comments noted that the notification procedures for discontinuing the royalty reduction when oil prices reach $28 per barrel in section 3103.4–1(d)(4) were vague. We agree, and therefore the rule has been amended to provide that BLM and MMS will do the calculations and notify the affected parties if and when this price provision becomes applicable.

Several comments expressed confusion on the notification process for royalty rate calculations. The rule has been amended by adding as an appendix a sample MMS Form Identification Number MMS–4377, Stripper Royalty Rate Reduction Notification, which is to be used for this notification, and providing the appropriate address to which it should be sent.

One comment stated that the description of eligible wells in section 3103.4–1(c)(2) was not specific enough. The rule has been amended to make it clear that only wells integral to production can be counted.

Several comments indicated misunderstanding of what constitutes an injection well, as provided in section 3103.4–1(c)(4) and particularly the use of the term "fluid" in this context. "Fluid" for purposes of this regulation includes both gas and liquid and the provision has been expanded by inserting "including reservoir pressure maintenance operations" at the end of the provision.

Several comments expressed confusion concerning the term "oil well" versus "completion" as described in section 3103.4–1(c)(3). The final rule has been changed to clarify this by redefining "oil well" as an oil completion.

Several comments expressed uncertainty as to the requirements for qualification and time frames for subsequent qualification periods. The final rule has been amended at section 3103.4–1(d)(3)(i)(B) to clarify the definition of qualifying properties and the use of subsequent qualifying periods.

Several comments stated that the definition of oil well should match that of State regulatory agencies. In the interest of national uniformity, these comments are rejected. One comment stated that the definition of oil well (completion) was too restrictive and that marginal wells producing casinghead gas where the energy equivalent exceeds that of oil would not qualify under the proposed rule. Section 3103.4–1(c)(3) has been amended to include oil completions that produce less than 60 MCF of gas per day.

Some comments asked whether new wells drilled on the property would benefit from the reduced royalty rate. The intent of the rule is that all wells on a stripper well property are to be included in any royalty reduction. Reduced royalty rates are not for individual stripper oil wells but for stripper oil well properties.

Several comments asked the types of lease to which the proposed rule applies. The rule applies to every lease regardless of the royalty schedule attached to the lease. Section 3103.4–1(c)(1) has been amended to make this clear.

Several comments requested clarification of the term "producing/injection day." If a completion produces oil or injects fluids for any portion of a day, it is counted as a whole producing day. Section 3103.4–1(d)(2) has been amended to make this point clear.

Several comments suggested either an increase or a decrease in the 15-barrel threshold stated in section 3103.4–1(c)(1). Many pointed to definitions in State law or the now-repealed crude oil Windfall Profits Tax Act. The threshold is appropriate and conforms to the latest relevant congressional enactment, the Omnibus Budget Reconciliation Act of 1990, which defined marginal wells for tax purposes as those producing less than 15 barrels per day. Therefore, the 15-barrel threshold is retained in the final rule.

Several comments stated that the 5-year test period was too short for the royalty rate reduction to be effective, while another suggested that it is unnecessarily long. The 5-year period is sufficient to see whether the royalty reduction results in additional oil

production or an increase in activity. Any shorter period would unduly reduce the incentive to develop additional reserves, or engage in costly enhanced recovery. Therefore, no change was made.

Several comments questioned MMS and BLM capabilities to administer this program. The BLM and MMS are cooperating closely in the administration of the royalty rate reduction program. The MMS will have principal monitoring responsibilities. The MMS is analyzing the impacts and outlining the internal processing of the applications that it will receive. Additionally, the personnel and system resource impacts have been identified. The majority of monitoring to be done by the MMS will use existing computerized financial processing and accounting systems. The MMS and the BLM understand their respective roles and responsibilities and are confident that the program will be successfully administered.

Several comments addressed mixed ownership in properties and how this would be handled under the rule. Although all eligible wells on the property will be used in considering whether the property qualifies for royalty rate reduction, only Federal lands within a qualifying property will be eligible for the royalty reduction. Section 3103.4–1(d)(3)(ii) has been amended to clarify this issue.

A comment suggested that total production referred to in section 3103.4–1(d)(2) should include production used on the lease. The provision for calculation of total production has been amended to make it clear that it refers to all production regardless of its disposition.

Another comment was concerned that the proposal would extend to properties producing significant quantities of gas. Applicable wells include only those classified as oil wells and those producing less than 60 MCF of gas per day. However, the royalty rate reduction is only applicable to oil production. Well classifications can change during the life of a well, and BLM will review for proper well classification and production rates during the program.

One comment suggested that the rule allow for the use of Form MMS–4054 (Oil and Gas Operations Report) in lieu of Form MMS–3160 for determining the property average daily production rate. The final rule has been amended to allow the use of either Form MMS–3160 or Form MMS–4054, whichever is appropriate.

Several comments suggested that the notification and filing requirements need be further clarified. The final rule includes specific notification instructions in section 3103.4–1(d)(3)(iii)(B) and a notification form to facilitate the filing of notices by the operators.

Some comments asked whether condensate production from oil wells, which is normally included in the oil volume as reported on Form MMS–3160, must now be excluded and reported separately. Condensate production will continue to be considered part of the oil volume for reporting purposes on Form MMS–3160. However, only oil is eligible for the royalty rate reduction.

One comment opposed this type of incentive for only a limited or special segment of the oil and gas industry, and suggested that the incentive should apply to all Federal oil properties. A royalty rate reduction for stripper oil properties is warranted in order to encourage the greatest ultimate recovery of oil from those properties. Section 39 of the Mineral Leasing Act allows royalty reduction only in cases where it is necessary to promote development or where leases cannot be successfully operated at the current royalty rate. There has been no demonstration that royalty reduction is necessary for all Federal leases, regardless of their rate of production, for these purposes.

One comment asked if the reduced royalty applicable to the Federal leases within communitization agreements or unit participating areas would be based on the qualifying status of the entire unit or communitization agreement as a property. This is correct. The property may include Indian and/or non-Federal lands for qualification purposes, but the reduced royalty only applies to the Federal leases in those agreements. Section 3103.4–1(d)(3)(ii) has been amended in the final rule to make this clear.

Several comments were received on the royalty rate formula stated in section 3103.4–1(d)(3)(ii). One comment suggested amending the formula by including oil price and operating costs differentials. This recommendation is not adopted in the final rule, because it would be overly complex and administratively cumbersome.

One comment questioned why the proposed rule counted injection wells in calculating the qualifying production rate. Injection wells are included in these calculations because, like producing oil wells, injection wells are an integral part of production operations and are used to enhance oil recovery. Therefore, they are appropriately included when computing the royalty rate.

One comment questioned the procedure for calculating applicable daily property production rates through "rounding down," exemplified in section 3103.4–1(d)(ii). Truncating decimals is an appropriate procedure, because it is consistent with the objective of providing an incentive and will be insignificant in the overall results.

One comment asked the rationale for reducing the royalty rate 0.8 percent for each barrel below 15 barrels of oil per day. The 0.8 percent represents a straight line per unit rate of decline of production from 12.5 percent to 0.5 percent; i.e., 11.7 percent is paid on 14 barrels, 10.9 percent is paid on 13 barrels, and so on. A gradual straight line reduction in royalty rate is simple to administer and should discourage manipulation of the qualifying production volumes.

One comment asked why the royalty rate was proposed in section 3103.4–1(d)(3)(iii)(C) to be capped at a reduced rate as determined from the initial qualifying period. The royalty rate will not increase beyond the rate established in the qualifying period, regardless of the amount of future production, in order to provide a continuing incentive to operators to increase investment in their oil properties and to obtain additional oil production over the entire life of the program.

One comment asked about the possibility of manipulation of lease operations in order to obtain the benefits of a royalty rate reduction. Manipulation of lease operations is possible. In coordination with MMS, BLM will be monitoring production and investigating anomalies. Lessees found to have manipulated production figures will be dropped from the program as provided in section 3103.4–1.(d)(3)(iv).

One comment asked why there is no regulatory language limiting the program to 5 years. The intent of the rule is not to limit this program to 5 years but merely to review it after 5 years. However, a provision has been added to the final rule in section 3103.4–1.(d)(3)(iv) allowing the Secretary to terminate the royalty reduction program at any time after 5 years.

Several comments questioned why the threshold for royalty rate reduction is set at $28 a barrel. This amount is an appropriate economic cutoff for the royalty rate reduction; it was used in the Omnibus Budget Reconciliation Act of 1990 tax revisions for marginal wells that had similar objectives.

Several comments asked why we did not address the deficiencies in the current royalty rate reduction process found at 43 CFR 3103.4–1 instead of proposing an across-the-board royalty rate reduction. Streamlining the current

process was considered, but the method adopted in the final rule will provide more of an incentive to operators to continue to produce these stripper oil properties by allowing them to make a profit and not just break even as required by the current regulations.

Several comments requested clarification of the term "routine operational and economic factors" as used in section 3103.4–1(d)(3)(iv). The Department interprets these as normal activities related to oil field operations and clearly not being conducted for the purpose of manipulating production. There is no need for further clarification of this provision, as the words used are used in their common, everyday meaning.

Several comments were received from State agencies about the possible Federal and State revenue losses that will result from the proposed royalty rate reduction. These comments typically reflected concern that the royalty rate reduction will merely generate a large initial Federal and State royalty loss with little offsetting royalty and tax gain from a projected subsequent increase in production. The comments also indicated the related concern that administrative costs and problems will be greater than anticipated and that these costs will be passed on to the States. The following are examples of these concerns. One agency calculated the most favorable combined Federal and State revenue loss at a substantial $20 million and did not consider offsetting this with Federal and State tax gains. Similarly, another predicted that the combined royalty loss will be around $29 million because it does not expect offsetting royalty and tax revenues from production increases. It also predicted that the costs of administering the program will be much larger than expected. A third State official stated that the projected increase in crude oil production as a result of the royalty reduction will not occur as predicted, so that the royalty reduction will fail to produce tax and royalty increases to help offset the initial loss.

Likewise, another State office stated that the projections of production increases from the royalty rate reduction were too optimistic and predicted less tax and revenue offsets to the initial royalty loss. It noted, for example, that a substantial part of the royalty reduction in one State will go to a few old, large oil fields that cannot be expected to increase oil production over what is currently, being produced.

The Department of the Interior recognizes that there will be some royalty losses to Federal and State Governments and estimated these losses to determine their possible magnitude. The Secretary chose to use royalty reduction specifically in order to increase recovery of the oil and gas resource to benefit the public interest rather than to maximize revenues to the Federal and State governments, and is fully authorized to do so by Section 39 of the Mineral Leasing Act, which was amended in 1946 to increase the Secretary's discretion in this regard. The Department estimated there to be a likely Federal gain from the royalty reduction program of $3.3 million, the States' loss to be $6 million and the benefit to the industry, largely from increased production, to be $49.1 million. The accuracy of these estimates is dependent on the production response of the industry, but the estimates are believed to be reasonable based on the results of simulating a similar royalty reduction for the Federal portion of the New Mexico reservoirs in the Department of Energy's (DOE) Tertiary Oil Recovery Information System (TORIS) model. The difference in impact on the State and Federal governments is not a product of any feature of the rule. The net State losses, from their share of the reduced Federal royalties, are not offset to the same extent as Federal losses, because State tax rates are generally lower than Federal rates. Furthermore, the indirect benefits associated with increased production, such as continued or increased employment in local communities, will help offset losses.

In the face of this disagreement over estimates between the comments and Department, the estimates have been re-examined. After further review, we find our estimates reasonable and find no reason to revise them. There is a risk that the losses will come in higher (or lower) than our estimates, but we view this as an acceptable risk in attempting to stimulate the production of Federal stripper oil leases and ensure that the maximum amount of economically recoverable oil is obtained from the reservoir.

One comment suggested that the abandonment rate described in the proposal was not significant enough to justify the proposed relief. The abandonment rate alone may not serve as an accurate indicator of the economy of the industry because many wells are shut-in while awaiting abandonment and are not counted as abandoned: There are 6,000 shut-in wells and 3,000 temporarily abandoned wells on Federal lands as of September 30, 1991, accounting for over 25 percent of all wells on Federal lands. The increases in recoverable reserves and production indicated by the DOE's "TORIS" model demonstrate that development would be promoted through this relief.

One comment questioned the statement in the preamble of the proposed rule that money currently spent in abandoning wells can instead be used toward production, noting that operators will eventually need to abandon wells and will retain funds therefor. It is true that the reduction will not eliminate the ultimate need to abandon the well. However, it will allow for increased cash flow at the present time by avoiding simultaneous abandonment of many wells and by generating revenue from additional production.

One comment stated that the Department proposes to count all wells "drilled in the earth" in determining the eligibility of a property. The rule provides for counting only those wells that produced or that had fluid injected into them during the qualifying or subsequent 12-month period.

Some comments stated that the proposal to use historical information to determine eligibility would allow operators who are currently economically healthy to be eligible for relief. There may be some isolated cases that can fall into this category, but it is unlikely that there would be a significant change in production in the brief time from the qualifying period to the present. Furthermore, the use of the qualifying period is administratively simple, can be implemented without any new administrative mechanism, and discourages manipulation.

One comment stated that on the one hand, the proposal served to discourage, not encourage, increased production, while on the other hand, it also locks in relief to properties that may have future production increases such that they no longer meet initial qualification production levels. Operators would not likely reduce their production and subsequent revenues to obtain a lower royalty rate, because the use of a linear sliding scale minimizes any gains from lower royalties, and the cost of such manipulation of production would outweigh those small royalty gains. Additionally, a property will enjoy the benefit of the relief even when its production rose above the stripper level. The rationale for this relief is to encourage investment to promote development and sustain increased production.

One comment stated that the rule provided no justification for allowing the lessee to retain the reduced rate for 6 months after the market has reached $28.00/bbl, as provided in section

3103.4–1(d)(4). A 6-month period is necessary to allow the lessee to adjust operations to take into account the higher royalty rate.

One comment stated that the royalty reduction would not minimize the necessity of drilling new wells. The proposed rule did not imply that new wells may not be needed for extension of current reservoirs or the development of new reservoirs, but rather proposed a royalty reduction that will allow existing wells to have extended production lives, and will minimize the need to drill replacement wells in existing reservoirs.

One comment expressed concern that some major producers who have de-emphasized their investment in domestic exploration and production would receive substantial benefits under the proposed royalty reduction rate. The proposed royalty reduction rate will provide incentives for current domestic producers to increase production as well as an incentive for a continued emphasis on domestic exploration and production. The analysis undertaken by the Department of Energy found the royalty reduction will stimulate a 29 percent increase in production from stripper wells on Federal lands.

One comment suggested that relief to Federal leaseholders alone in unfair to private stripper well operators. It is beyond the Department's authority to provide relief to private holdings. The relief provided to Federal lessees will not affect the competitive position of any other producer, the production from Federal stripper well properties not being large enough to affect the world price of oil or other costs of production.

One comment noted that lessees would be entitled to relief even if they chose to shut-in or abandon wells. The Department never intended to prevent all abandonment, but the role provides an incentive to producers for more complete recovery of remaining reserves.

One comment noted that the use of the 12-month period ending July 31, 1991, as the initial qualifying period in section 3103.4–1(d)(3)(i)(B) may permit lessees to use shut-in wells to determine their eligibility even if they currently would not meet the definition of well properties. The number of properties in which such shut-ins have occurred is not significant in comparison to the benefits afforded by using historical data.

One comment stated that the average cost savings per property would be insufficient to promote development. Another stated that other factors, such as pricing and environmental concerns, have a greater impact on the operator's decision to continue production. The Department's estimate, based on DOE's TORIS Model, is that there will be an increase of 4.7 million barrels in the oil produced per year. While this rule does not address all of the relevant factors, it will have a very significant impact.

One comment noted that the rule does not assert that all Federal stripper well properties qualify for relief under the standards of Section 39. The class of eligible wells defined in this rule reasonably approximates the class in which there is a substantial probability that recoverable reserves will be produced that otherwise would not be produced because of the margin of profitability at the market price and current royalty rates that have prevailed over the last 5 years. Therefore, the relief provided by the rule encourages the greatest ultimate recovery and promotes development of marginal properties, so that this rule is consistent with the statute. Further, timely achievement of this increased recovery would not be possible if royalty reduction requests for these well properties are processed on a property-by-property basis under the existing regulations, because many of the operators may have to shut-in wells before all such requests could be prepared, analyzed, and approved.

One comment questioned the Department's ability to detect manipulation due to the current MMS audit procedures focusing on larger producing properties. The strategy for detecting manipulation does not depend on royalty audit, but it will be focused on identifying anomalies in production levels.

Two comments stated that the finding in the regulatory preamble is insufficient to support the exercising of the Secretary's authority under section 39 of the Mineral Leasing Act (MLA), as amended. One comment questioned the Department's authority for granting royalty relief simultaneously to all stripper well properties. The royalty rate reduction is necessary to promote development of the substantial majority of stripper oil well properties that cannot economically be fully developed at the current royalty rate and market price. As noted in the preamble of the proposed rule, stripper well production is important to maintaining United States production, which has been declining during the last 5 years. Also, there has been an increase in the number of shut-in and abandoned wells. In light of this, and the modeling of the Department of Energy, the Department estimates that the royalty rate reduction will increase production from stripper well leases by 4.7 million barrels of oil per year over the test period. These findings meet the requirements in Section 39 of the MLA, which allows the Secretary to grant royalty rate reductions "for purposes of encouraging the greatest ultimate recovery of * * * oil * * * and in the interest of conservation of natural resources * * * whenever in his judgment it is necessary to do so in order to promote development * * *."

One comment challenged the adequacy of the Secretary's findings to support "nationwide" royalty rate reductions, citing the Interior Board of Land Appeals (IBLA) decision in *Peabody Coal Co.*, 93 IBLA 317 (1986), for the proposition that there must be a showing of "a reasonable probability operation would cease or development, recovery, or conservation of the resources would be jeopardized." 93 IBLA at 327. The rule does not comprise a nationwide royalty rate reduction, but rather provides for reductions targeted on properties with marginal production in which the economics of operating at today's oil prices while paying full royalties dictate abandonment before technically recoverable resources have been produced. There is a reasonable probability that recovery would be jeopardized or operations cease, based on actual experience and projections of the DOE TORIS model. The correspondent's interpretation of *Peabody* was rejected by the Interior Board of Land Appeals in *State of Wyoming*, 117 IBLA 316, 322, affirmed U.S. Dist. Ct. (Wyo.) No. CV–0097–B, filed December 16, 1991, in which IBLA stated:

> The State has also urged that the Department has consistently interpreted 30 U.S.C. 209 (1988) to allow a royalty reduction to promote development *only when the development could not otherwise economically occur.* * * * Neither the statute nor the regulations limit the Secretary's discretion to this criterion. Nor did we hold in *Peabody* or any other Board decision that the *only* circumstance authorizing royalty reduction to promote development is when development cannot otherwise economically occur. To so hold would render the section 209 language "whenever * * * necessary * * * to promote development" meaningless. As noted in Solicitor's Opinion, M–36920, 87 I.D. at 73, this language was added to section 209 "as an *alternative* to finding that the lease 'cannot be successfully operated' " and gave the Secretary "*greater* discretion in granting relief." (Emphasis added.)

A comment suggested that it may be in the national interest to allow wells to remain shut-in to await better economics to resume production. The comment also faulted the Department for not showing what percentage of Federal leases are at risk of permanent

loss of production or the "break point" for economic survival of a lease. The comment further accused the Department of seeking the reduction to test the effect of royalty reduction without a rational basis at this time for determining the amount of reduction "necessary" for development. The comments are not adopted in the final rule. The national interest is not served by shutting in wells prematurely. Either such wells are left unplugged with the attendant risk to the environment, or they are permanently plugged making re-entry a proposition far too expensive for stripper well production rates. Leaving wells shut-in for long periods of time increases the risk of damaging the reservoir and fresh water zones because of possible casing deterioration or other factors, as well as possibly making it cost prohibitive to re-enter either to resume production or to plug and abandon the well permanently. The proposed rule did show that an appreciable percentage of producing Federal leases (15,500 of 23,000) were stripper wells at risk of permanent loss of production under current market conditions. The breakpoint for such stripper properties varies with the level of production, and therefore the Secretary has decided to adopt a sliding scale for determining the appropriate royalty at each level of production.

A comment suggested that the Secretary is limited to reducing royalties on a property-by-property basis upon application of the lessee and a specific showing of hardship or need, because otherwise the power to reduce royalties would infringe the responsibility of Congress to establish minimum royalty rates. For this proposition, the comment relied on provisions of the original section 17 of the Mineral Leasing Act concerning stripper wells that have since been repealed. The comment also relied heavily on the legislative history of a 1982 amendment of section 30 creating a royalty reduction mechanism for relinquished leases. The reduction is approved on the terms of a 1946 amendment of section 39 authorizing reductions the Secretary determines to be necessary to promote development. Neither provisions long since repealed nor provisions added to another part of the law 35 years later provide guidance, much less govern, with respect to the meaning of the 1946 language of section 39. Section 39 itself does not limit the Secretary to lease-by-lease determinations. Nor, as suggested by the comment, should the existing regulations establishing one mechanism for royalty rate reduction be read to limit the Secretary to that mechanism alone, when the Secretary finds a determination for a class or group of leases to be appropriate in the interest of maximizing ultimate recovery from those leases. In exercising discretionary authority under section 39, the Secretary is not bound to observe the minimum royalties specified in statute. *Solicitor's Opinion, Reduction of Production Royalties Below Statutory Minimum,* M–36920, 87 I.D. 69 (1979).

Determination

After consideration of the comments received, it is determined that a royalty reduction on oil from low production leases is necessary to promote development, encourage the greatest ultimate recovery of oil, and serve the interest of conserving natural resources. The national interest would be served, in a time of increasing dependence on imported fuel and a weak domestic oil industry, by greater production from present Federal oil leases of the oil that it is technically feasible to produce. A significant number of leases with production averaging less than 15 barrels per well-day contain wells that have been shut in or abandoned over the last 5 years from which additional oil could have been recovered. The expected cumulative effect of premature abandonments and foregone investments in enhanced recovery or new drilling on stripper well properties will diminish United States production 4.7 million barrels below what can be achieved by adoption of this rule. At the low market prices for crude oil that have prevailed for the last 5 years and that are expected in the next few years, the current royalty rate does not permit a profit margin on low production wells that makes it economical to maximize oil recovery. In addition, the incentive to produce incremental oil declines as the average daily production falls.

This determination is based on an analysis of the DOE's Tertiary Oil Recovery Information System modeling of certain reservoirs with stripper oil properties undertaken at the request of the Department of the Interior. The modeling indicated that there will be an increase in production of 4.7 million barrels per year if this royalty reduction initiative is adopted. Accordingly, establishing sliding scale royalty reduction rates, progressively reducing the royalty rate as average production declines below 15 barrels a day, will delay the abandonment of stripper wells, secure additional production therefrom, and increase the level of production from stripper properties by creating incentives for additional drilling and enhanced recovery programs. This determination is consistent with Congress' decision in the 1990 Omnibus Budget Reconciliation Act to afford tax relief to operators of stripper well properties. Furthermore, timely action to prevent premature abandonment, with the attendant risks of damage to reservoirs and costs of re-entry, requires immediately offering relief to all properties producing less than 15 barrels per well-day rather than relying on property-by-property determinations.

The principal author of this final rule is Joe Lara of the Division of Fluid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, BLM, and the MMS.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and appendix 5, Item 5.4.B(6), and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic

impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not allow or require the taking of any property without due process. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement(s) contained in § 3103.4–1 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers 1004–0145 and 1010–0090.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 1(a) and 2(b)(2) of Executive Order 12778.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—Mineral resources, Oil and gas production, Mineral royalties.

For the reasons stated in the Preamble, and under the authorities cited below, part 3100, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: August 4, 1992.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

PART 3100—ONSHORE OIL AND GAS LEASING; GENERAL

1. The authority citation for part 3100 is revised to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3103—Fees, Rentals and Royalty

2. Section 3100.0–9 is added to read as follows:

§ 3100.0–9 Information collection.

(a)(1) The collections of information contained in § 3103.4–1(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and are among the collections assigned clearance number 1004–0145. The information will be used to determine whether an oil and gas operator or owner may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for the information collections assigned clearance number 1004–0145 is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0145, Washington, DC 20503.

(b)(1) The collections of information contained in § 3103.4–1(c) and (d) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0090. The information will be used to determine whether an oil and gas lessee may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for this information is estimated to average ½ hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service (Mail Stop 2300), 381 Elden Street, Herndon, VA 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project, 1010–0090, Washington, DC 20503.

3. Section 3103.4–1 is amended by redesignating paragraphs (c) and (d) as paragraphs (b)(3) and (e) respectively, revising paragraph (b)(1), and adding new paragraphs (c) and (d) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty, or minimum royalty.

* * * * *

(b)(1) An application for the above benefits on other than stripper oil well properties shall be filed in the proper BLM office. It shall contain the serial numbers of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(c)(1) A stripper well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, that produces an average of less than 15 barrels of oil per eligible well per well-day for the qualifying period.

(2) An eligible well is an oil well that produces or an injection well that injects and is integral to production for any period of time during the qualifying or subsequent 12-month period.

(3) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquid hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(4) An injection well is a well that injects a fluid for secondary or enhanced oil recovery, including reservoir pressure maintenance operations.

(d) Stripper oil well property royalty rate reduction shall be administered according to the following requirements and procedures.

(1) An application for the benefits under paragraph (a) of this section for stripper oil well properties is not required.

(2) Total oil production (regardless of disposition) for the subject period from the eligible wells on the property is totaled and then divided by the total number of well days or portions of days, both producing and injection days, as reported on Form MMS–3160 or MMS–4054 for the eligible wells to determine the property average daily production rate. For those properties in communitization agreements and participating areas of unit agreements that have allocated (not actual) production, the production rate for all eligible well(s) in that specific communitization agreement or participating area is determined and shall be assigned to that allocated property in that communitization agreement or participating area.

(3) Procedures to be used by operator:

(i) Qualifying determination.

(A) Calculate an average daily production rate for the property in order to verify that the property qualifies as a stripper property.

(B) The initial qualifying period for producing properties is the period August 1, 1990, through July 31, 1991. For the properties that were shut-in for 12

consecutive months or longer, the qualifying period is the 12-month production period immediately prior to the shut-in. If the property does not qualify during the initial qualifying period, it may later qualify due to production decline. In those cases, the 12-month qualifying period will be the first consecutive 12-month period beginning after August 31, 1990, during which the property qualifies.

(ii) Qualifying royalty rate calculation. If the property qualifies, use the production rate rounded down to the next whole number (e.g., 6.7 becomes 6) for the qualifying period, and apply the following formula to determine the maximum royalty rate for oil production from the Federal leases for the life of the program.

Royalty Rate (%) = 0.5 + (0.8 × the average daily production rate)

The formula-calculated royalty rate shall apply to all oil production (except condensate) from the property for the first 12 months. The rate shall be effective the first day of the production month after the Minerals Management Service (MMS) receives notification. If the production rate is 15 barrels or greater, the royalty rate will be the rate in the lease terms.

(iii) Outyears royalty rate calculations.

(A) At the end of each 12-month period, the property average daily production rate shall be determined for that period. A royalty rate shall then be calculated using the formula in paragraph (d)(3)(ii) of this section.

(B) The new calculated royalty rate shall be compared to the qualifying period royalty rate. The lower of the two rates shall be used for the current period provided that the operator notifies the MMS of the new royalty rate. The new royalty rate shall not become effective until the first day of the month after the MMS receives notification. Notification shall be received on Form MMS–4377 and mailed to Minerals Management Service, P.O. Box 17110, Denver, CO 80217. If the operator does not notify the MMS of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the property shall revert back to the royalty rate established as the qualifying period royalty rate, effective at the beginning of the current 12-month period.

(C) The royalty rate shall never exceed the calculated qualifying royalty rate for the life of this program.

(iv) Prohibition. For the qualifying period and any subsequent 12-month period, the production rate shall be the result of routine operational and economic factors for that period and for that property and not the result of production manipulation for the purpose of obtaining a lower royalty rate. A production rate that is determined to have resulted from production manipulation will not receive the benefit of a royalty rate reduction.

(v) Certification. The applicable royalty rate shall be used by the operator/payor when submitting the required royalty reports/payments to MSS. By submitting royalty reports/payments using the royalty rate reduction benefits of this program, the operator certifies that the production rate for the qualifying and subsequent 12-month period was not subject to manipulation for the purpose of obtaining the benefit of a royalty rate reduction, and the royalty rate was calculated in accordance with the instructions and procedures in these regulations.

(vi) Agency action. If a royalty rate is improperly calculated, the MMS will calculate the correct rate and inform the operator/payors. Any additional royalties due are payable immediately upon notification. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102. The BLM may terminate a royalty rate reduction if it is determined that the production rate was manipulated by the operator for the purpose of receiving a royalty rate reduction. Terminations of royalty rate reductions will be effective on the effective date of the royalty rate reduction resulting from the manipulated production rate (i.e., the termination will be retroactive to the effective date of the improper reduction). The operator/payor shall pay the difference in royalty resulting from the retroactive application of the unmanipulated rate. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102.

(4) The royalty rate reduction provision for stripper well properties shall be effective as of October 1, 1992. If the oil price, adjusted for inflation by BLM and MMS, using the implicit price deflator for gross national product with 1991 as the base year, remains on average above $28 per barrel, based on West Texas Intermediate crude average posted price for a period of 6 consecutive months, the benefits of the royalty rate reduction under this section may be terminated upon 6 months' notice, published in the Federal Register.

(5) The Secretary will evaluate the effectiveness of the stripper well royalty reduction program and may at any time after September 10, 1997, terminate any or all royalty reductions granted under this section upon 6 months notice.

(6) The stripper well property royalty rate reduction benefits shall apply to all oil produced from the property.

(7) The royalty for gas production (including liquids produced in association with gas) for oil completions shall be calculated separately using the lease royalty rate.

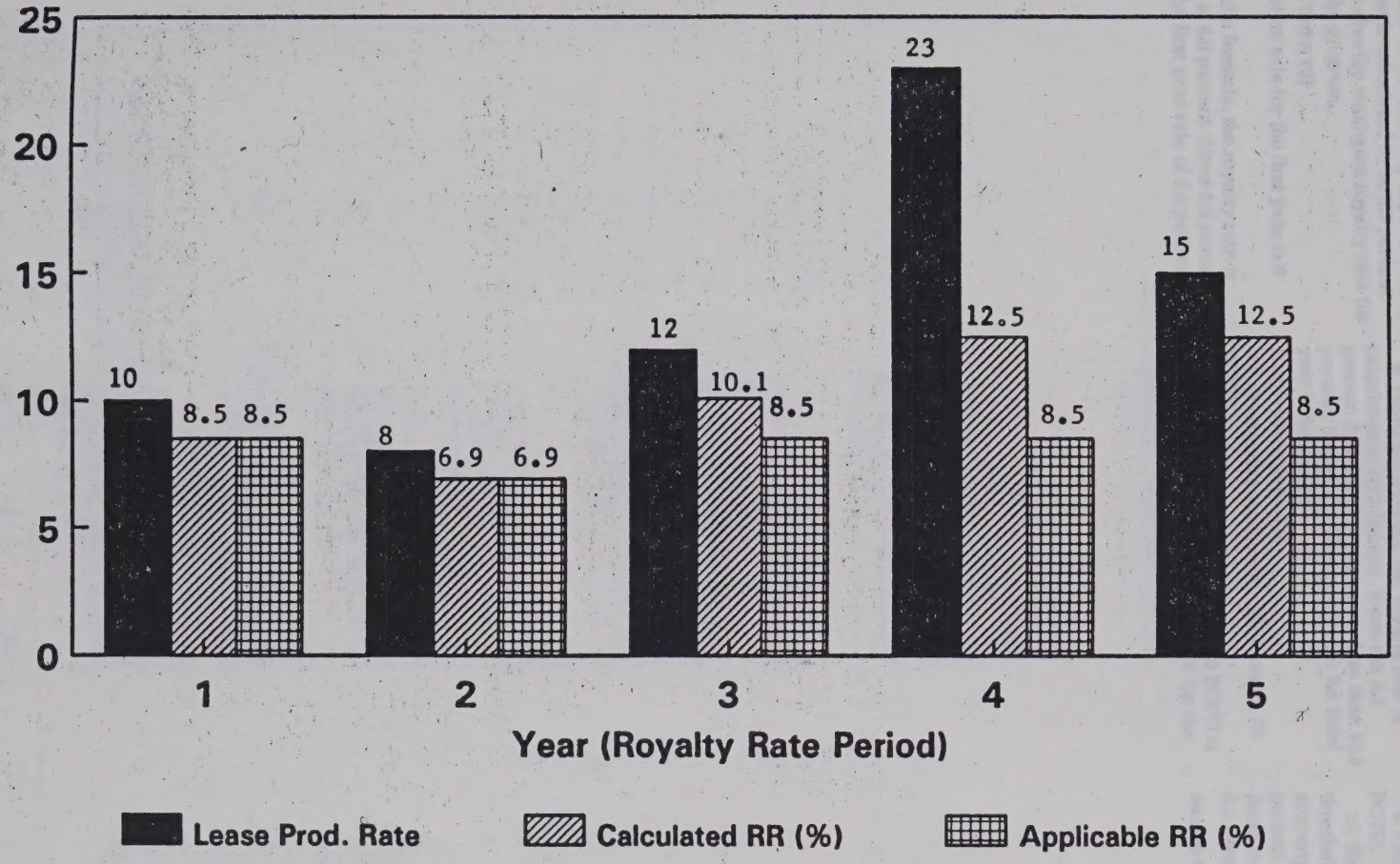
(8) If the lease royalty rate is lower than the benefits provided in this stripper oil property royalty rate reduction program, the lease rate prevails.

(9) The minimum royalty provisions of § 3103.3–2 apply.

(10) Examples.

BILLING CODE 4310–84–M

Royalty Rate (RR) Reduction
Example 1: Immediate Qualification



BILLING CODE 4310-84-C

Royalty Reduction (RR)
Example 1: Immediate Quantification
Year (Royalty Rate Basis)
Claimed Net (at RR)
Year (Quantification Date)
Claimed Net (at RR)
Year (Quantification Date)
Claimed Net (at RR)
Year (Quantification Date)
Claimed Net (at RR)
Year (Quantification Date)
Claimed Net (at RR)

Explanation, Example 1

1. Property production rate per well for qualifying period (August 1, 1990–July 31, 1991) is 10 barrels of oil per day (BOPD).

2. Using the formula, the royalty rate for the first year is calculated to be 8.5 percent. This rate is also the maximum royalty rate for the life of the program.

$8.5\% = 0.5 + (0.8 \times 10)$

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated at 6.9 percent. Since 6.9 percent is less than the first year rate of 8.5 percent, 6.9 percent is the applicable royalty rate for the second year.

$6.9\% = 0.5 + (0.8 \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 8.5 percent first year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 8.5 percent.

$10.1\% = 0.5 + (0.8 \times 12)$

7. Production rate for the third year is 23 BOPD.

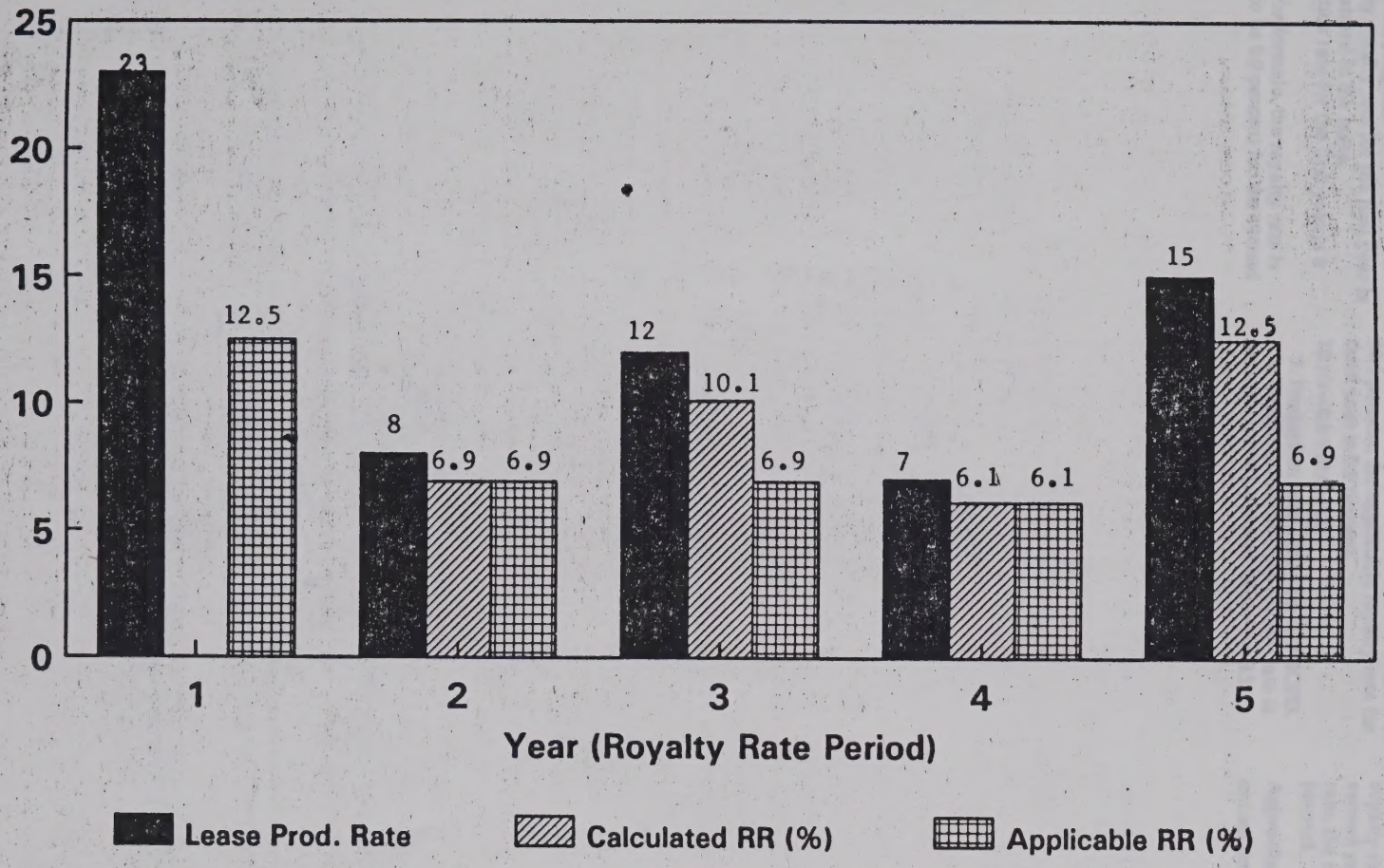
8. Since the production rate of 23 BOPD is greater than the 15 BOPD threshold for the program, the calculated royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the property rate, the royalty rate for the fourth year is 8.5 percent.

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the lease rate, the royalty rate for the fifth year is 8.5 percent.

BILLING CODE 4310-84-M

Royalty Rate (RR) Reduction
Example 2: Subsequent Qualification



BILLING CODE 4310-84-C

Royalty Rate (RR) Reduction
Example 2: Suspendent Qualification
Year (Royalty Bank Period)
Loss (Not Paid)
Liability (Not Paid)
Claims Paid
Claims Incurred (IN)
Liability (IN)
0
5
10
15
20
25
1
2
3
4
5

Explanation, Example 2

1. Property production rate of 23 BOPD per well (for the August 1, 1990–July 31, 1991, qualifying period prior to the effective date of the program) is greater than the 15 BOPD which qualifies a property for a royalty rate reduction. Therefore, the property is not entitled to a royalty rate reduction for the first year of the program.

2. Property royalty rate for the first year is the rate as stated in the lease.

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated to be 6.9 percent for the second year. This rate is also the maximum royalty rate for the life of the program.

$6.9\% = 0.5 + (0.8 \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 6.9 percent second year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 6.9 percent.

$10.1\% = 0.5 + (0.8 \times 12)$

7. Production rate third year is 7 BOPD.

8. Using the formula, the royalty rate is calculated at 6.1 percent. Since the 6.1 percent third year royalty rate is less than the qualifying (maximum) rate of 6.9 percent, the royalty rate for the fourth year is 6.1 percent.

$6.1\% = 0.5 + (0.8 \times 7)$

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the lease royalty rate. However, since the 6.9 percent second year royalty rate is less than the lease rate, the royalty rate for the fifth year is 6.9 percent.

Appendix:

BILLING CODE 4310-84-M

U.S. DEPARTMENT OF THE INTERIOR

STRIPPER ROYALTY RATE REDUCTION NOTIFICATION

NOTE: Reduced Royalty Rate is not effective until the month after this notification is received by the Minerals Management Service. See 43 CFR Part 3100 for complete instructions.

OPERATOR NAME: _____ DATE SUBMITTED _____

OPERATOR NUMBER: _____

PERSON TO CONTACT _____ _____ _____ _____

AREA CODE | TELEPHONE NUMBER | EXTEN.

LEASE NUMBER(S)	AGREEMENT NUMBER \1	QUALIFYING OR CURRENT PERIOD \2	QUALIFYING ROYALTY RATE	CURRENT ROYALTY RATE \3	EFFECTIVE DATES

NOTE: THIS NOTIFICATION MUST BE SUBMITTED TO MMS AND ALL PAYORS ON THE LEASES.

\1 Include agreement number for any lease located in an agreement. All leases in the agreement must be listed separately.

\2 Initial qualifying period August 1, 1990, through July 31, 1991, or current period. If the property does not initially qualify, subsequent qualifying period would be the latest 12-month period before the property qualifies (i.e., a 12-month rolling average).

\3 Current period royalty rate must be compared to qualifying period royalty rate and the lower of the two rates will be the royalty rate for the subsequent year, when notification is received by MMS.

M MMS-4377 (5/92)

[FR Doc. 92-19200 Filed 8-10-92; 8:45 am]
BILLING CODE 4310-84-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[WO-702-4830-15-24 1A; Circular No. 2645]

RIN 1004-AB91

Visitor Services: Rules of Conduct

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing a mandatory safety belt regulation that applies to occupants of the front seats of motor vehicles operated on Federal lands managed by the BLM (public lands) that are within States that do not have in effect a mandatory safety belt law, or that have enacted such a law but the law does not apply to public lands or may not be enforced by BLM. Under existing BLM regulations, the use of safety belts is required only on public lands in States that have a mandatory safety belt law in effect. Requiring use of safety belts will reduce risk of injury or death in vehicle accidents on public lands, and contribute to the reduction of societal costs caused by such incidents.

EFFECTIVE DATE: January 22, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (702), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Norman Duquette, Acting Chief, Safety Staff, Bureau of Land Management, (202) 653-8851.

SUPPLEMENTARY INFORMATION: The BLM is establishing a mandatory safety belt regulation applying to occupants of motor vehicles operated on public lands under its administration. The BLM currently administers over 270 million acres of public lands and its general regulations pertaining to vehicles and traffic safety are codified at 43 CFR subpart 8365. These regulations apply to all lands administered by the BLM. Under this rule, BLM will require the operator and all front seat passengers of a motor vehicle in motion to be restrained by a properly fastened safety belt. The burden of compliance is on the operator of the vehicle. Children, as defined by applicable State law, would be required to be restrained in accordance with State law. A person convicted of violating this or any other BLM regulation promulgated under the authority of the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) (FLPMA) will be subject to a maximum penalty as defined by law.

The proposed rule was published in the **Federal Register** on May 30, 1991 (56 FR 24363), and the public comment period expired on July 29, 1991. During the comment period, the BLM received 11 comments. Of these responses, 7 were from organizations or associations dealing with highway safety or insurance issues, 2 were from business entities and 2 were from individuals.

The arguments raised during the public comment period by those opposed to the rule were that the rule was an example of overregulation, that it was an erosion of civil liberties, and that it was unenforceable.

The issue most often addressed in the comments was whether the regulation should be enforced through "secondary enforcement" procedures (i.e., vehicles would not be stopped solely to check on violations of this regulation but would be checked if stopped for other purposes). The BLM intends to implement this regulation primarily through signs, text in brochures, and incidental public contact, not through "checkpoints or 'primary' enforcement measures that are not initiated as the result of another violation." One comment stated: "Existing resource constraints in terms of personnel available to enforce this regulation [should not] determine enforcement authority." On the other hand, another comment questioned whether the rule would require additional personnel and funding. Secondary enforcement (citing violators only if they are stopped for some other reason) will not require additional manpower or funding, which is an important consideration in times of budgetary constraint. The secondary enforcement provided for in the rule does, nevertheless, provide the BLM with a valuable tool for promoting safety on public lands. Although we recognize the benefits of primary enforcement as considerable, it is simply not practical for BLM to employ it at this time.

Other points of clarification were requested. The BLM intends that the regulation, as written, shall apply to all members of the public on the public lands. Interior Department personnel and volunteers are covered by other laws and regulations. The BLM also intends that the regulation, as written, shall apply to all motor vehicles ordinarily used for transportation or recreation that are originally equipped with safety belts. This includes trucks, cars, buses, and other on-road vehicles, and off-road vehicles that are originally equipped with safety belts. It is the objective of the BLM, through this regulation, to reduce the number of vehicular injuries and fatalities.

Other comments questioned whether the regulation would apply on public lands whether or not the surrounding State had a safety belt law in effect. There seems to be a misconception that the rule would not apply to BLM lands in States that do not have such a law. The Summary, as printed in the **Federal Register** on May 30, 1991, noted that: "Under current BLM regulations * * * use of safety belts by visitors is required only on public lands in States that have a mandatory safety belt law in effect." The intention of this rule is to promulgate a safety belt use requirement for all BLM administered lands, regardless of whether or not the surrounding State has one. One writer who appeared to understand this goal stated: "We are also pleased BLM proposes to enforce the applicable mandatory use law for BLM land in those States that have such laws and to require safety belt use even when BLM lands are exempted by State law." Thus, rather than overstepping the province of the States, the rule will enable BLM officers to implement a safety belt use requirement on its lands in States that previously exempted BLM lands from its authority. As for a related question about enforcement, FLPMA authorizes the BLM to cooperate with State, local, and other jurisdictions in the enforcement of applicable laws on public lands. This authority is not affected by this rule.

Several comments urged that the safety belt requirement in the rule apply to off-road vehicles (ORVs), while others questioned whether certain types of vehicles, such as pick-up trucks, are intended to be covered. The **Federal Register** on May 30, 1991, stated: "The rule would apply only to those vehicles ordinarily used for transportation on public roads as opposed to farm, construction or off-road vehicles that occasionally appear on public roads." Although it is true that many injuries and fatalities are due to accidents involving off-road vehicles, not all vehicles are required by the Department of Transportation to be equipped with safety belts, and some of such vehicles would be less safe with seatbelts. Department of Transportation regulations require certain types of motor vehicles to be equipped with safety belts and/or other restraint systems while other types of vehicles (motorcycles, for example) are not required to be so equipped. It would not be reasonable for one Federal agency to require individuals to add equipment to vehicles that are not, in accordance with regulations of another Federal agency,

manufactured with such equipment. All trucks originally equipped with safety belts, including pick-ups, would be covered by this rule, while dune-buggies and tractors would not if they were not so equipped originally. With this in mind, the question arises how to define an ORV for inclusion in this regulation. One comment suggested that the rule apply to "off-road vehicles with four wheels and automotive-type construction." This approach would be too broad. Many ORVs have less than four wheels, while snowmobiles and some types of construction vehicles have no conventional wheels at all. Many older automotive-type vehicles, such as antique cars, old jeeps and pick-ups that are still in use, were not originally equipped with safety belts. Accordingly, the definition for "vehicle" in the final rule has been amended to include all vehicles originally equipped with safety belts, which may include some ORVs.

Several comments were received asking for a clarification of the term "visitor." BLM intended that the term "visitor," as used in the preamble to the proposed rule, cover everyone on public lands with the exception of BLM volunteers and employees, who are already covered under other mandatory safety belt regulations. However, the term "visitor" is not used in the regulatory text, so there is no need to define the term in the regulation.

Other comments opposed the rule, arguing that the BLM is overstepping its authority, that safety belt regulation should be left to the States, that the BLM would not be able to enforce the regulation, and that it would be too expensive to enforce. As stated earlier, FLPMA gives the BLM authority to promulgate regulations dealing with conduct on the public lands that they administer. General regulations of the BLM pertaining to vehicles and traffic safety are codified in title 43 of the Code of Federal Regulations 43 CFR part 8365. The policy of secondary enforcement avoids the problem of lack of enforcement personnel, because vehicles will have already been stopped for other purposes under part 8365. For the same reason, additional costs will be negligible.

One comment asked 2 specific questions: Whether the standard penalty provisions of FLPMA would be invoked against violators of this provision, and whether the rule would apply to vehicles originally equipped with safety belts that no longer are so equipped. A person convicted of this regulation will be subject to the same penalty as applies to a violation of any other part of FLPMA. If a safety belt required by Department of Transportation regulations is removed, it would be a violation of this rule.

The principal authors of this final rule are Walter Johnson, Chief, Division of Law Enforcement, and Norman Duquette, Acting Chief, Safety Staff, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

The BLM has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to: (a) Increase public use to the extent of compromising the nature and character of the area or cause physical damage to it; (b) introduce incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it; (c) conflict with adjacent ownerships or land uses or cause a nuisance to adjacent owners or occupants.

Based on this determination, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulation in the Departmental Manual at 510 DM 6 (49 FR 21436). It is therefore determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The basis for these determinations is that beyond the costs of signing and other forms of public outreach, the final rule will impose no costs on any public or private entity. It merely requires existing safety equipment to be used.

For the same reason, the Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Additionally, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Dated: November 25, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, Reporting and recordkeeping requirements, Traffic safety, Vehicles, Wilderness.

In consideration of the foregoing, and under the authorities stated below, part 8360, group 8000, subchapter H, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

PART 8360—VISITOR SERVICES [AMENDED]

1. The authority citation for part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460l–6a, 16 U.S.C. 1241 *et seq.*

2. Section 8360.0–5 is amended by adding paragraph (e) to read as follows:

§ 8360.0–5 Definitions.

* * * * *

(e) *Vehicle* means any motorized transportation conveyance designed and licensed for use on roadways, such as an automobile, bus, or truck, and any motorized conveyance originally equipped with safety belts.

Subpart 8365—Rules of Conduct [Amended]

3. Section 8365.1–3 is amended by redesignating the existing section as paragraph (a), and adding paragraph (b) to read as follows:

§ 8365.1–3 Vehicles.

(a) * * *

(b)(1) The operator of a motor vehicle is prohibited from operating a motor vehicle in motion, unless the operator and each front seat passenger is restrained by a properly fastened safety belt that conforms to applicable United States Department of Transportation standards, except that children, as defined by State law, shall be restrained as provided by State law.

(2) Paragraph (b) applies on public lands, or portions thereof, that are located within a State in which there is no State law in effect that requires the mandatory use of a safety belt by the vehicle operator and any front seat passenger. It also applies on public lands, or portions thereof, located within a State in which the mandatory safety belt law of the State does not apply to the public lands or in which any provision of State law renders the mandatory safety belt law of the State unenforceable by the authorized officer as to acts or omissions occurring on the public lands.

(3) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt, nor does it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant restraining device.

(4) An authorized officer may not stop a motor vehicle for the sole purpose of determining whether a violation of paragraph (b)(1) of this section is being committed.

[FR Doc. 92-31151 Filed 12-22-92; 8:45 am]
BILLING CODE 4310-84-M

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David B. Friedel, 202–622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1012 of the Tax Reform Act of 1986 denied, for taxable years beginning after December 31, 1986, tax-exempt status to certain organizations described in section 833(c) of the Internal Revenue Code ("section 833 organizations"), relating to certain Blue Cross or Blue Shield organizations and certain other health insurers. As a result, such organizations became includible corporations under section 1504(b) of the Code. Under § 1.1502–75(d)(1), as a result of a section 833 organization becoming the new common parent of an existing consolidated group ("old consolidated group"), the old consolidated group terminated and a new affiliated group with the section 833 organization as the new common parent was created.

There is no indication that Congress intended the termination of the old consolidated group and the creation of a new affiliated group as a consequence of the denial of tax-exempt status to section 833 organizations.Therefore, on September 14, 1988, the Service announced in Notice 88–107, 1988–2 C.B. 445, that it would promulgate regulations ameliorating the harsh results that would follow from the termination of the old groups.

On September 5, 1990, a notice of proposed rulemaking by cross-reference to temporary regulations adding section 1.1502–75T(d)(5) to part 1 of title 26 of the Code of Federal Regulations was published in the **Federal Register** (55 FR 36290). These regulations adopted a neutrality principle which was intended to preclude treating members of an old group better or worse by reason of the enactment of section 833.

One written comment responding to the proposed rules was received. No public hearing was requested or held. For the reasons set forth below, the proposed rules are adopted without modification.

The written comment objected to the application of the separate return limitation year rules to an old group which elected to be treated as remaining in existence with the section 833 organization as its new common parent. As explained in the explanation of provisions in the temporary regulations, T.D. 8310, 55 FR 36274 (September 5, 1990), the proposed regulations provided a modified rule under which a taxable year beginning before 1987 of a member of an old group that elected to remain in existence is not treated as a separate return limitation year with respect to the post-1986 taxable years of any corporation that was a member of the old group for each day of that taxable year.

Under this modified rule, pre-1987 losses may generally be carried forward to offset the post-1986 income of other members of the same old group, but those losses may not offset the post-1986 income of any other corporation, including the section 833 organization which became the group's new common parent. Thus, the loss carryover treatment of each corporation affiliated with the section 833 organization is generally unaffected by the enactment of section 833. The Service continues to believe that this rule is the proper rule under the neutrality principle.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. The rules will primarily affect consolidated groups, which tend to be larger businesses. The rules will not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small businesses.

Drafting Information

The principal author of these regulations is David B. Friedel, of the Office of Assistant Chief Counsel (Corporate) within the Office of Chief Counsel, Internal Revenue Service. Other personnel of the Internal Revenue Service and the Treasury Department participated in developing the regulations.

List of Subjects

26 CFR §§ 1.1502–75 through 1.1502–100

Income taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1502–75T also issued under 26 U.S.C. 1502. * * *

§ 1.1502–75 [Amended]

Par. 2. Section 1.1502–75 is amended by adding and reserving paragraph (d)(4) and by redesignating section 1.1502–75T(d)(5) as section 1.1502–75(d)(5).

§ 1.1502–75T [Amended]

Par. 3. Section 1.1502–75T is amended by revising the section heading to read as set forth below and by removing paragraphs (c) and (d).

§ 1.1502–75T Temporary regulations for filing consolidated returns; coordination with section 338(h)(10) (Temporary).

* * * * *

George O'Hanlon,

Acting Commissioner of Internal Revenue.

Approved: July 31, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–23373 Filed 9–24–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3150 and 3160

[WO–610–4111–24–1A; Circular No. 2646]

RIN: 1004–AC02

Onshore Oil and Gas Geophysical Exploration; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds to the regulations on onshore oil and gas geophysical exploration a section governing appeals of decisions and approvals to allow decisions and approvals by an authorized officer to remain in full force and effect when an appeal is filed with the Interior Board of Land Appeal (IBLA), unless sufficient justification for a stay is provided. It

similarly amends the section in the regulations governing appeals of decisions and approvals relating to onshore oil and gas operations to allow the decision of a State Director or Administrative Law Judge to remain in full force and effect during the pendency of an appeal to IBLA. Such provisions are needed to allow the IBLA to determine whether the issues involved in an appeal warrant a stay of onshore oil and gas activities and the accompanying delays and economic consequences. Both full-force-and-effect rules apply to appeals to IBLA only. The rules do not affect the authority of the State Director to grant or deny a request for a stay while a decision is under State Director Review.

EFFECTIVE DATE: October 26, 1992.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610) Bureau of Land Management, Room 501 L Street Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653–2127.

SUPPLEMENTARY INFORMATION: An interim final rule and a proposed rule with a 30-day comment period were published simultaneously in the Federal Register on March 13, 1992 (50 FR 9010 and 9014). The purpose of the proposed rule was to request public review and comment to aid the agency in determining whether or not to publish a subsequent and permanent final rule for the provisions, which would be effective prior to or concurrently with the December 31, 1992, expiration date of the interim final rule. This final rule will supersede the interim final rule upon the date that this rule becomes effective.

Part 3150 establishes procedures for conducting oil and gas geophysical exploration operations when authorization for such operations is required from the Bureau of Land Management (BLM). Part 3160 governs operations associated with the exploration, development, and production of oil and gas deposits from leases issued or approved by the United States. During the comment period, comments were received from 106 sources: 86 from business interests, primarily related to the oil industry; 14 from associations; and 6 from private attorneys. Most of the comments fully supported the proposal to allow decisions and approvals of the BLM authorized officer, State Director, or Administrative Law judge to remain in full force and effect during the pendency of an appeal to IBLA. Some comments, in addition to supporting the proposed rule, suggested specific revisions or recommendations. The comments and BLM's responses to them are discussed below.

Two comments suggested that *ad hoc* advocacy organizations be required by the IBLA to post a bond when requesting a stay in any case under an appeal, as is required by most State and Federal Courts for purposes of protecting the lessee's or permittee's interest during appeal. One other comment suggested that, in order to cover the cost of any economic hardship to the lessee or permittee, any third parties making an appeal should be required to provide a bond. The standards for obtaining a stay require third parties making an appeal to show justification for the stay. Therefore, bonding is not deemed to be necessary.

One comment suggested that the word "subpart" should be changed to "part" in the proposed rule at § 3150.2(b), sentence 2, to assure that the exemption from 43 CFR 4.21(a) includes all subparts of part 3150. Section 4.21(a) of title 43 is an automatic stay provision for decisions that do not fall into any excepting laws or regulations such as are created by this final rule. This comment has been adopted in the final rule for part 3150 and part 3160 in order to remove an unintended inconsistency between the first and second sentences in paragraph (b) and in paragraph (c) of § 3165.4.

One comment suggested that, in order to maintain consistency in the regulations governing IBLA appeals, similar provisions regarding the request for stay should be added to the regulations governing the State Director Review Process at § 3165.3 or that § 3165.3(b) and (d) be amended in the final rule to list specifically "approvals" of the authorized officer. For purposes of § 3165.3(b), "approvals" are encompassed within the meaning of the phrase "decision of the authorized officer." In § 3165.3(d), a State Director's affirmation or denial of an approval of the authorized officer is properly termed a decision. The stay request language is not necessary in § 3165.3 because the ability to grant a stay is inherent in a State Director's authority to conduct an administrative review and the reserved authority over subordinate authorized officers. The delegation of authority to an authorized officer under the jurisdiction of a State Office does not deprive the State Director of any reviewing authority. In addition, specific changes to sections in parts 3150 and 3160 that were not amended in the proposed rule would arguably require separate proposed rulemaking. Therefore, this suggestion was not incorporated in the final rule.

One comment suggested that the current rule at paragraphs 3165.3(e) (1) and (2) be rewritten to incorporate appeals of decisions and approvals of authorized officers that do not address compliance requirements, notices of violations, or penalties. The writer felt that this would maintain consistency with the proposed rule by allowing all decisions to remain in force pending appeal. Current paragraphs 3165.3(e) (1) and (2) specifically address the continuing full force and effect, during a period of State Director review, of notices of noncompliance, notices of violation, or proposed penalties and daily accumulations of penalties that were included in the regulations as a result of the enactment of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701). The suggestion that other types of decisions be added to these two provisions was not adopted in the final rule because a decision or approval normally goes into effect on the effective date of the decision or approval absent a postponement of its effectiveness by the authorized officer or a subsequent stay by the State Director.

Two comments suggested that proposed § 3165.4(c) should refer to decisions and approvals of "State Directors and Administrative Law Judges," rather than decisions and approvals of the "authorized officer." The comments pointed out that, unlike the parallel rule in part 3150 concerning geophysical decisions under which appeals on the merits of decisions and approvals are made directly to the IBLA under 43 CFR 4.21, decisions and approvals of authorized officers affecting the merits of oil and gas operations are appealable under § 3165.3(b) first to the State Director, rather than directly to the IBLA. Because the decisions and approvals of the authorized officer under part 3160 must first be reviewed by the State Director, this recommendation was adopted in the final rule for part 3160. The term "State Director or Administrative Law Judge" replaces the term "authorized officer" in the final rule.

One comment recommended that the rule be amended to include an exception for proposed oil or gas wells located in a Federal potash area or within close proximity to an underground mine to ensure that all safety issues are fully considered before a well is drilled. It is the policy of the BLM to include a provision in oil and gas leases which notifies oil and gas operators that wells may not be allowed in locations that may be hazardous to potash mining operations. Further, by Order of the

Secretary of the Interior, approval is denied for most applications for permits to drill oil and gas wells when wells would be located within potash enclaves. Therefore, provisions are already in place to protect Federal potash areas from oil and gas drilling operations and vice versa. The final rule does not adopt this recommendation.

Some comments reasoned that the proposed rule did not consider long-term impacts of oil and gas operations; that leasing decisions in some areas are made without benefit of environmental review or public input; that current procedures covering the BLM environmental analyses do not provide for meaningful public involvement, nor do those procedures provide an adequate forum for analysis of the true impacts of leasing decisions and that the Resource Management Plan (RMP) sets leasing boundaries without thoroughly examining the impacts of field development. The RMP consists of 9 action steps, including identifying the issues, developing planning criteria, inventorying and data collection, analyzing the management situation, formulating alternatives, analyzing effects of alternatives, selecting the preferred management plan, and monitoring and evaluation. National Environmental Policy Act (NEPA) analyses are made prior to BLM decisions or approvals authorizing oil and gas exploration, leasing, or operational activities. Public participation is encouraged throughout the process. Comments are routinely requested from all interested and affected parties during public scoping meetings, which are held before BLM planning and NEPA documents are initiated. Under usual circumstances, the public is then again requested to review and provide comments on the draft planning document. After the proposed planning document is published, a 30-day protest period is provided. If any protests are filed, administrative review is completed before the plan is approved.

One comment stated that the placement of decisions into immediate full force and effect would negate the purpose and efficacy of appeal procedures. On the contrary, however, the proposed rule in no way reduces public opportunity to file an appeal. In part 3160, two opportunities for appeal remain. A request for a formal review by the State Director is the first opportunity that an adversely affected party must exhaust before seeking further review by the IBLA. By virtue of the State Director's supervisory authority, the State Director has the inherent discretionary authority to review and overturn or modify, if necessary, the decision of subordinates. This inherent discretionary authority to exercise supervisory prerogatives allows the State Director to entertain requests for a stay or to stay the decision's effectiveness on his own initiative. Second, the State Director's decision may be appealed to the IBLA. Under part 3150, an authorized officer's decision may be appealed to the IBLA. Once again, in each case a stay may be requested with a sufficient showing of justification as is required by all Federal judicial bodies. The rule places a reasonable burden on the appellants to show clearly why a stay of approved exploratory or operational activity is warranted without taking away any substantive right of appeal. The rule serves to preserve the right to appeal while at the same time contemplating potential harm to permittees, licensees, lessees, or operators caused by an unwarranted stay.

If a State Director splits his decision into two parts by denying a stay requested by an adversely affected party before reaching a conclusion on the merits of the decision being reviewed under § 3165.3(b), the denial of the stay request constitutes a decision within the meaning of section 3165.4(a) and can be appealed to the IBLA pursuant to § 3165.4(a). The effect of an appeal of a denial of a stay request will be governed, like appeals of other decisions, by the revised § 3165.4(c). The lodging of an appeal of a stay denial will not automatically stay, under 43 CFR 4.21(a), the decision for which the adversely affected party sought a stay. Instead, the revised § 3165.4(c) gives the adversely affected party the opportunity to petition the IBLA for a stay in accordance with the four standards set out in § 3165.4(c). Because, in explaining the effect of appeals, the first sentence of § 3165.4(c) states that all decisions shall remain in effect pending appeal to IBLA, additional language has been added to § 3165.4(c) making it clear that a State Director retains his discretionary authority to grant a request for a stay or to stay on his own initiative the decision that he affirmed, overturned, or denied upon his review while the matter is being appealed to IBLA. If a request for a stay is denied at this stage of the appeals process, the clarifying language gives the adversely affected party the right to petition the IBLA for a stay by addressing the standards for obtaining a stay described in § 3165.4(c). In that instance, as well as with other instances under the rule, the IBLA will, as is provided in the first sentence of § 3165.4(c), base its decision to grant or deny a stay upon consideration of the standards set out in § 3165.4(c).

One comment expressed the concern that, in these situations where BLM has denied a stay, IBLA could not act on a petition for a stay absent having BLM's administrative record. To the contrary, these situations are comparable to a judicial proceeding involving a challenge to agency action in which the court is called upon to act on a motion for a temporary restraining order or a preliminary injunction without having the benefit of the agency's administrative record on the challenged action. Furthermore, 43 CFR 4.411(a) requires an adversely affected party filing an appeal with IBLA to notify the State Director of its appeal, and 43 CFR 4.413(a) requires the appellant to serve the statement of reasons for appeal filed with IBLA on the appropriate official in the Office of the Solicitor of the Department of the Interior representing the affected State Director. By virtue of these provisions, BLM will be notified of the appeal and the reasons that the appellant asserts as warranting a stay of the State Director's decision. If the State Director is concerned that the existence of the appeal or the reasons given by the appellant may lead the IBLA to grant a stay, he can, acting through the Office of the Solicitor, file an expedited response to rebut the appellant's assertions.

Because the revised § 3165.4(c) also concerns effects of an appeal from a decision subject to an appeal under § 3165.4(b), the additional language added in the final rule to § 3165.4(c) clarifies the right of an Administrative Law Judge or a State Director to stay decisions subject to appeal under § 3165.4(b) pending their appeal to IBLA. In addition, the final rule contains parallel language in § 3150.2(b) for decisions subject to appeal under § 3150.2(a).

Some comments stated that the BLM's responsibilities as a land managing agency charged with protection of public resources would be severely undermined by the rule, which the comment stated would elevate the interest of private enterprise over public values. This final rule does not negate BLM responsibility to protect the environment and/or public resources. The intent of the final rule is to attempt to balance the interests of potential appellants with the interests of other affected parties. Before making final decisions, BLM will continue to rely on and comply with requirements for coordination, public input, and environmental documentation in order

to meet and balance these concerns with its multiple-use mission.

Another comment stated that oil and gas operators would have an opportunity to drill during "administrative windows" and the resource would not be protected in the interim; that by permitting operations to remain in effect while an appeal is pending before the IBLA, the rule would allow drilling work to be completed prior to the IBLA rendering a decision; and that automatic stay provisions provide the requisite margin of safety for resource protection pending administrative or judicial review. The BLM, through the NEPA and pre-lease planning processes, has already analyzed any potential environmental impacts due to leasing and subsequent operations, and through the review process, the public has had opportunities to comment. The approval process is designed to identify and address fully all concerns over proposed operations and to require that all potential environmental impacts that might be disclosed in an appeal would have already been assessed and mitigation measures outlined by the time a proposal is approved. Under these circumstances, the requirement for an appellant to justify issuance of a stay order by the IBLA represents a reasonable balance between acceptable risks to the environment or other public interests and responsible challenges to BLM decisionmaking. If an appellant is concerned about the adverse effects of a decision, it is incumbent on the appellant to file a request for a stay or to appeal a decision denying a requested stay quickly.

One comment expressed concern that the BLM was not offering similar protection measures against irreparable harm as are offered under judicial review. However, the continuing availability of a stay upon sufficient showing will guard public resources against irreparable harm. A petition for a stay on administrative review serves the same function as a motion for preliminary injunction on judicial review. Both require a showing of sufficient justification.

Another comment claimed that the proposed rule violated section 102(a) of the Federal Land Policy and Management Act (FLPMA). Section 102(a)(5) is a statement of policy calling on the Secretary to "structure adjudication procedures to assure adequate third party participation." Public participation is afforded by having internal BLM and Department of the Interior appeals procedures whereby adversely affected parties may obtain a review of the decision. Changing the provisions for obtaining a stay does not deprive the public of its ability to challenge BLM decisions. Moreover, section 102(a)(5), as a statement of policy, is not an enforceable provision of FLPMA in any event. See section 102(b) of FLPMA.

One comment asked whether the elimination of the application of 43 CFR 4.21(a) to any decision or approval made under part 3150 or 3160 includes eliminating the 30-day wait provision. The intent of the rule is to eliminate the application to such decisions and approvals of both the automatic stay and the 30-day wait provision.

The principal authors of this final rule are G. Jean Austin, Division of Fluid Minerals, and Christopher N. Gibson, of the Alaska State Office, BLM, assisted by the Office of the Solicitor, Department of the Interior.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule would have no impact on any physical attributes of the public lands or any environmental resource values. By the time of the lodging of an appeal, under standard BLM procedures an environmental review and analysis will have been performed on the activity that is the subject of the appeal. Therefore, no additional environmental analysis is needed merely because the final rule would change the effect of the pendency of an appeal.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, innovation, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Expenses currently being incurred by geophysical exploration operators or lessees/operators of Federal leases will not increase.There are no expected increases in costs or prices for consumers. Costs may actually decline because of a possible decrease in the number of appeals. There would be no need for increase in Federal, State, or local agency budgets or personnel requirements to implement this rule. The gross annual effect on the United States economy is not likely to approach $100 million. Further, for the same reasons, and because the effect of the rule is to restore to small entities the authority to act that had been granted by the BLM, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. It would not infringe any private property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 3150

Oil and gas exploration; Public lands—mineral resources.

43 CFR Part 3160

Environmental protection, oil and gas resources, Government contracts, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: August 24, 1992.

Richard Roldan,

Acting Assistant Secretary of the Interior.

For reasons stated in the preamble, and under the authorities stated below, the interim rule amending Parts 3150 and 3160 of Group 3100, Subchapter C, Chapter II, Subtitle B, of Title 43 of the Code of Federal Regulations published in the **Federal Register** of March 13, 1992, (57 FR 9010) is adopted as final with the following changes:

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

1. The authority citation for part 3150 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*, 30 U.S.C. 351–359. 43 U.S.C. 1701 *et seq.*, 16 U.S.C. 3101

et seq., 31 U.S.C. 483a, 42 U.S.C. 6504, 42 U.S.C. 6508.

2. Section 3150.2(b) is revised to read as follows:

§ 3150.2 Appeals.

* * * * *

(b) All decisions and approvals of the authorized officer under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of the authorized officer under this part. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Nothing in this paragraph shall diminish the discretionary authority of the authorized officer to stay the effectiveness of a decision subject to appeal pursuant to paragraph (a) of this section upon a request by an adversely affected party or on the authorized officer's own initiative. If the authorized officer denies such a request, the requester can petition for a stay of the denial decision by filing a petition with the Interior Board of Land Appeals that addresses the standards described above in this paragraph.

PART 3160—OIL AND GAS OPERATIONS

3. The authority citation for 43 CFR part 3160 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 301–306; 25 U.S.C. 396; 25 U.S.C. 396a–396q; 25 U.S.C. 397; 25 U.S.C. 398; 25 U.S.C. 398a–398e; 25 U.S.C. 399; 43 U.S.C. 1457, see also Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen 41); 40 U.S.C. 471 *et seq.*; 42 U.S.C. 4321 *et seq.*; 42 U.S.C. 6508; Pub. L. 97–78; 30 U.S.C. 1701 *et seq.*; and 25 U.S.C. 2102.

4. Section 3165.4 is amended by revising paragraph (c) to read as follows:

§ 3165.4 Appeals.

* * * * *

(c) *Effect of an appeal on an approval/decision by a State Director or Administrative Law Judge.* All decisions and approvals of a State Director or Administrator Law Judge under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of a State Director or Administrative Law Judge under this part. A petition for a stay of a decision or approval of a State Director or Administrative Law Judge shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Nothing in this paragraph shall diminish the discretionary authority of a State Director or Administrative Law Judge to stay the effectiveness of a decision subject to appeal pursuant to paragraph (a) or (b) of this section upon a request by an adversely affected party or on the State Director's or Administrative Law Judge's own initiative. If a State Director or Administrative Law Judge denies such a request, the requester can petition for a stay of the denial decision by filing a petition with the Interior Board of Land Appeals that addresses the standards described above in this paragraph.

[FR Doc. 92-23220 Filed 9-24-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-104; RM-7972]

Radio Broadcasting Services; Lake City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *285A to Lake City, Michigan, and reserves the channel for noncommercial educational use in response to a petition filed by New Horizons Broadcasting Company. See 57 FR 21761, May 22, 1922. Canadian concurrence has been received for this allotment at coordinates 44–19–48 and 85–12–42. No site restriction has been imposed on this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 5, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–104, adopted August 10, 1992, and released September 21, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Lake City, Channel *285A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-23350 Filed 9-24-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-102; RM-7969]

Radio Broadcasting Services; Pequot Lakes, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C2 for Channel 261A and modifies the license for Station KTIG at Pequot Lakes, Minnesota, to specify operation on Channel 274C2 in response to a petition filed by Minnesota Christian Broadcasters, Inc. See 57 FR 21055, May 18, 1992. Canadian concurrence has been received for this allotment at coordinates 46–36–06 and

#2647

and that no further cleanup under CERCLA is appropriate. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Edward J. Hanlon, Remedial Project Manager, Office of Superfund, U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd. (HSRM–6J), Chicago, IL 60604; (312) 353–9228, or Gina Weber (P19–J), Office of Public Affairs, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604, (312) 886–6128.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Adrian Well Field Site, Adrian, Minnesota.

A Notice of Intent to Delete for this site was published September 1, 1992 (57 FR 39659). The closing date for comments on the Notice of Intent to Delete was October 1, 1992. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Hazardous waste.

Dated: December 4, 1992.

David A. Ullrich,

Acting Regional Administrator, USEPA Region 5.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp; p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for "Adrian Municipal Well Field," Adrian, Minnesota; and by revising the total number of sites, "1,083" to read "1,082".

[FR Doc. 92–31439 Filed 12–29–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400, 5460, and 5470

[WO–230–6310–02–24–1A; Circular No. 2647]

RIN 1004–AC03

Sales of Forest Products: Contract Administration: Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the forest product regulations to provide for more flexibility in setting due dates for periodic payments when circumstances beyond the control of the purchaser prevent contract performance for a substantial period of time during the operating season. The rule provides the flexibility needed by removing the specified dates for payment of periodic payments. These provisions relieve a purchaser from the unnecessary burden of a large payment becoming due when such purchaser was prevented from generating any cash flow from a contract by certain circumstances beyond its control. This provision does not diminish the periodic payment provision's intended effect of encouraging prompt performance on timber sale contracts. The rule also provides for reduction to 5 percent of the full amount and partial refund of the first installment during the period when the contracting officer requests interruption or delay of operations for a period in excess of 60 days during the operating season.

EFFECTIVE DATE: January 29, 1993.

ADDRESSES: Suggestions or inquiries may be mailed to: Director (230), Bureau of Land Management, room 204 L Street Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bob Bierer, (202) 653–8864.

SUPPLEMENTARY INFORMATION: A proposed rule amending the regulations governing periodic payments and payment of the first installment on timber sale contracts was published on August 21, 1992 (57 FR 37936) with a request for comments. The comment period expired on September 21, 1992. The BLM received 10 letters containing comments on the proposed rule. Three letters from timber purchasers contained general comments of support, and four letters from timber purchasers, two letters from associations and one letter from a law firm contained specific comments. The specific comments contained in these letters and the response to the comments are listed below.

The Bureau of Land Management (BLM) has determined that the regulations governing periodic payments and payment of the first installment on timber sale contracts could cause an unnecessary burden on entities holding those contracts. Many BLM timber sales are being suspended for consultation with the U.S. Fish and Wildlife Service, or by injunctions and administrative stays resulting from court actions and appeals concerning endangered species and old growth timber. The regulations provide no mechanism for relief to timber sale purchasers who are subject to unnecessary financial hardships due to these delays. Therefore, this rule was proposed to provide some flexibility for BLM to provide relief in such situations where a purchaser is delayed from operating a timber sale contract by circumstances beyond its control.

On August 19, 1992, the Bureau of Land Management published a final rule (57 FR 37475) providing for an extension of timber sale contracts without reappraisal in certain situations. The rule was intended to provide more fairness and flexibility in granting timber sale contract extensions. Some of the comments on that rule pointed out that there was a need to provide for deferment of the periodic payments due on the first and second anniversary of some timber sale contracts. The same reasons that justify a contract extension should justify a deferment of the periodic payments.

Regulations were published on May 14, 1990 (55 FR 19886) requiring payment of 20 percent of the total purchase price by the first anniversary of all timber sale contracts with a term 19 months or longer and payment of 40 percent of the total purchase price by the second anniversary of all contracts with a term 27 months or longer. The regulations allow credit toward the payments for the value of road construction completed by the purchaser. The reason for those regulations was to encourage prompt

performance on timber sale contracts and to discourage speculation. However, when the purchaser is prevented from operating the contract due to certain circumstances beyond its control, the incentives for prompt performance cannot function as intended and a financial hardship is imposed on the purchaser.

Under the terms of many timber sale contracts there are periods during the year when certain operations on the contract are not permitted, such as building roads during the winter rainy season, harvest operations during the winter in winter range areas for certain wildlife species, thinning operations during the spring sap flows, harvest operations during the nesting period near bald eagle nests, and so forth. There are also seasons of the year when harvesting operations are not feasible due to normal adverse weather conditions, such as snow in high elevations during the winter. These seasonal restrictions tend to shorten the time when a purchaser can actually accomplish the work required to harvest a timber sale. When a purchaser is delayed for a substantial period during the normal operating season, it may mean that operations are delayed for a whole year. During a short operating season, any delay may well mean that a purchaser has to wait until the next season to complete an operation and generate some cash flow from a timber sale contract, or qualify for a credit toward the periodic payment due from the value of road construction completed.

A periodic payment obligation on a timber sale contract could amount to a considerable financial hardship on a purchaser, if conditions beyond the control of such purchaser prevent the purchaser from completing road construction or harvesting timber from a timber sale contract for a substantial period of time. In this situation, the rule allows the purchaser to request adjustment of periodic payment due dates in writing. The contracting officer would be required to issue a decision on such requests within 15 days of receipt of the request.

The rule allows the necessary flexibility to defer periodic payments under certain circumstances. The rule allows adjustment of the periodic payment due dates when the contracting officer delays a purchaser's operations prior to the due date and for more than 30 days during an operating season for factors beyond the control of the purchaser, other than market fluctuations. Periodic payment due dates may be adjusted to provide a period of operating time equal to that time that would have been available to the purchaser, prior to the periodic payment due date, without such a delay. The rule provides the flexibility needed by removing the specified dates for payment of periodic payments in § 5461.2(a)(3) of the existing regulations. The due dates for periodic payments will be set out in the contract.

From time to time operations are delayed for substantial periods due to injunctions, or consultation and other requirements under the Endangered Species Act. Where a purchaser has large sums of money tied up in the first installment on such contracts, delays may cause financial hardship, especially on smaller companies with limited capital, that may be prevented from participating in other contracts during such extended delays.

The rule provides for a reduction of the first installment held by the BLM during such periods of delay. The purchaser may request and the contracting officer may grant a reduction to 5 percent of the first installment payment specified in the timber sale contract when the contracting officer requires an interruption or delay of operations on a contract for a period in excess of 30 days during the operating season. Upon notice from the contracting officer that operations may proceed, the purchaser will have 15 days to restore the first installment to the full amount. No timber is to be cut or removed from the contract area before the first installment is restored to the full amount specified in the timber sale contract. Failure to restore the first installment within the 15-day period will be considered a breach of the contract and the contracting officer may cancel the contract.

1. Several comments addressed whether a 60-day delay should be required to justify reducing the first installment payment to 5 percent of the requirement in the timber sale contract. The recommendations were for a lesser period of 30 or 10 days. Some of these comments also recommended specifically directing the contracting officer to grant the request for reduction of the first installment and recommended that BLM approval be required to be granted in 15 days, rather than 30 days as proposed. BLM agrees that a 60-day delay is too long to require for approval of the first installment reduction, considering that the operating season on many timber contracts has been reduced significantly through seasonal restrictions imposed by BLM in the past several years. The seasonal restrictions are needed to accommodate environmental considerations on timber sale contracts. The final rule has been amended to allow the contracting officer to approve a request for reduction of the first installment payment when there is reason to believe a contract delay will last longer than 30 days, and such a request is required to be answered by the contracting officer within 15 days. The final rule removes the requirement to wait 30 days before making a request for the reduction. The recommendation for clarification to the contracting officer which would make such a reduction mandatory was not included in the rule. In the event a purchaser disagrees with a decision to not allow a reduction of the first installment, the purchaser can pursue relief through the disputes clause in the timber sale contract.

2. Two comments stated that the proposed rule does not provide for refund of unencumbered money from a period payment made before a delay of operations is required by the contracting officer. The requirement for the periodic payment was known to the purchaser prior to the delay. The purpose for periodic payments is to reduce speculative bidding and serve as an incentive for the purchaser to perform on the contract. Implementation of this comment would neutralize the purpose for requiring periodic payments, and reward timber purchasers who did not perform when performance was possible. This suggestion was not adopted.

3. Two comments stated that the rule should provide for refund of unencumbered money from second and subsequent installment payments made before a delay of operations requested by the contracting officer. Most timber purchasers use a payment bond for cutting and/or removal of timber prior to the payment of the second installment or subsequent installments, in which case payments are made on a monthly basis after timber is removed from the contract area. In this situation payments are "encumbered." In the event a timber purchaser would make a cash payment in advance of cutting or removal, moneys could be considered "unencumbered" at the time of a delay. However, it is already within the authority of the contracting officer to refund the "unencumbered" money or credit such amounts to other contracts upon the written request of the purchaser. This suggestion was not adopted.

4. Two comments suggested that proposed § 5461.2(a)(5) did not make it clear that the value of payments already made is considered credit toward the amount due for periodic payments as well as satisfactory completed road

construction. The language has been amended to clarify this point.

5. One comment suggested this rule should be retroactive for all contracts delayed from operating as a result of consultation for the northern spotted owl with the United States Fish and Wildlife Service. It was BLM's intent that upon the effective date of this final rule the regulation would apply to all existing contracts. Language has been added to § 5461.2(a)(3) and (a)(5) to clarify retroactive application.

6. Two comments identified concern that the language in the proposed rule merely removed the requirement for periodic payments to be made on a specific date, but did not make specific provision that the purchaser could be relieved from this contract requirement when circumstances beyond the purchaser's control delay operations. Also, both comments suggested that delays greater than 10 days should justify payment deferral. A sentence was added to § 5461.2(a)(5) to explain deferral options for delays greater than 30 days, and to make it clear that the contract may be amended to adjust the periodic payment requirement upon receipt of a written request from the purchaser that demonstrates qualification for the adjustment. A 10-day delay to qualify for periodic payment deferral is not considered a significant time for adjustment of a periodic payment requirement, considering that a purchaser would have known for one or two years that timber payments and/or the value of satisfactorily completed road construction equal to 20 or 40 percent of the total purchase price were required.

7. One comment suggested that by removing the introductory paragraph in the present § 5461.2 and imposing the use of the term "periodic payments" in the proposed rule, the ability of a purchaser to furnish a performance bond to meet the periodic payment requirements under § 5451.2 has been eliminated. This is not true because the existing regulations do not provide for the delay of the first anniversary date or second anniversary date payments by an increase in the performance bond. The final rule does not affect the option for an increase in the performance bond above the minimum to allow cutting timber before payment of second or subsequent installments. The introductory paragraph of the existing regulation refers to "installment payments," and paragraph (a)(3) requires 20 or 40 percent payment of the total purchase price, depending on the circumstances. These payments are time payments, which have nothing to do with installment payments. Section 5461.2(b) allows delayed payment of installments if a bond is furnished as provided in § 5451.2. The final rule does not affect this option for the purchaser. The final rule provides for deferral of periodic payments in the event the contract cannot be operated due to delays beyond the control of the purchaser. A performance bond increase above the minimum as provided in § 5451.2(a) is not designed to relieve operators of financial difficulties caused by delays, but to enable operators to cut timber without having to make extremely large installment payments. This suggestion was not adopted.

The principal author of this final rule is Tom State of the Oregon State Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

This rule is consistent with the policy set out in the President's memorandum of January 28, 1992, and will relieve an unnecessary burden of the timber industry in the West. This rule will help to maintain a healthy forest products industry which can provide jobs to the people in timber dependent communities of the West.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total economic effects of this rule have not been quantified, but are believed to be minimal, well below $100 million annually. By deferring some periodic payments, the Government would lose some interest on that money, but the amount would not be significant because there would not be many contracts affected by this rule. Costs to the Government would be offset by the benefit to the industry occasioned by relieving timber-sale purchasers of unnecessary financial hardship when they are delayed in performing their contract obligations due to circumstances beyond their control. This rule would make timber-sale purchasers affected more competitive and possibly prevent failure of some companies by easing such hardship. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The number of individuals or companies affected by the rule is expected to be low, and the economic effects are expected to be positive because the rule would reduce financial burden and improve cash flow status. Smaller companies with limited capital, who might have been prevented from participating in other contracts during extended delays under the previous regulations, will particularly benefit from the present rule.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule would not authorize the taking of any property, and would not interfere with any contractual or other property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 5400

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Public lands.

For the reasons stated above, and under the authorities cited below, parts 5400, 5460, and 5470 of group 5400, subchapter E, chapter II of the Code of Federal Regulations are amended as set forth below:

PART 5400—[AMENDED]

1. The authority citation for part 5400 continues to read:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11; 30 Stat. 414, as amended; sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 315, 1181a; 16 U.S.C. 607a; 43 U.S.C. 1701 *et seq.*

2. Section 5400.0–5 is amended by adding the following definitions in alphabetical order, to read as follows:

§ 5400.0–5 Definitions.

* * * * *

Operating season means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

Operating time means a period of time during the operating season.

* * * * *

PART 5460—[AMENDED]

3. The authority citation for part 5460 continues to read:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181a; 30 U.S.C. 601 *et seq.*

4. Section 5461.2 is amended by removing the introductory paragraph and revising paragraph (a) to read as follows:

§ 5461.2 Required payment schedule.

(a)(1) For sales of less than $500,000, installment payments shall not be less than 10 percent of the total purchase price. For sales of $500,000 or more, installment payments shall be $50,000.

(2) The first installment shall be paid prior to or at the time the authorized officer signs the contract. A purchaser cannot apply any portion of the first installment to cover other payments due on the contract until either 60 percent of the total purchase price has been paid or road construction required by the contract, the value of which when combined with contract payments is equal to 60 percent of the total purchase price, has been completed. When either of these 60-percent levels has been reached, one-half of the first installment may be applied to other payments due on the contract.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section, when the contracting officer suspends or requests the purchaser to interrupt or delay operations during the operating season for a reason beyond the control of the purchaser, the contracting officer may reduce the amount of the first installment to 5 percent of the installment amount listed in the timber sale contract. Reductions may be made when the suspension, interruption, or delay can reasonably be expected to last longer than 30 days or has been in effect for more than 30 days for existing contracts. The purchaser shall request such reduction in writing from the contracting officer. The contracting officer will answer such requests within 15 days. The funds released may be refunded or credited to other contracts. When the contracting officer notifies the purchaser that operations may proceed, the purchaser shall have 15 days after such notification to return the first installment to the full amount specified in the timber sale contract. Failure to pay the full first installment amount within the specified time will be considered a material breach of contract, and the contracting officer may cancel the contract. No timber may be cut or removed from the contract area until the first installment is restored to the full amount required by the contract.

(4) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments made up to that point, not including the first installment, or one-half of the first installment after the other one-half of the first installment has been released as provided in paragraph (a)(2) of this section.

(5) Timber sale contracts shall contain provisions requiring periodic payments for all sales with a contract term of 19 months or longer. For sales with a contract term of 19–26 months, one periodic payment of 20 percent of the total purchase price will be required. For all sales with a contract term of 27 months or longer, two periodic payments will be required. The first payment shall be 20 percent of the total purchase price and the second payment shall be 40 percent of the total purchase price. The value of satisfactorily completed road construction required by the contract and all completed contract payments may be used as a credit against the amount due for periodic payments. The due dates for the periodic payments will be specified in the timber sale contract. Adjustment of the periodic payment dates in the contract may be made when the contracting officer suspends, interrupts, or delays operations during the operating season prior to the due date for a periodic payment for a reason beyond the control of the purchaser. The adjustment may be made when the suspension, interruption, or delay can reasonably be expected to last longer than 30 days or has been in effect for more than 30 days for existing contracts. The purchaser shall request such adjustment in writing from the contracting officer. The contracting officer will answer such requests within 15 days.

(6) For the purpose of this section, the value of satisfactorily completed road construction shall be based on the Bureau of Land Management's appraisal allowance. Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered as completed road construction for purposes of this section.

PART 5470—[AMENDED]

5. The authority citation for part 5470 continues to read:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

§ 5473.4 Approval of request.

6. Section 5473.4 is amended by removing paragraph (d) and by redesignating paragraph (e) as paragraph (d).

Dated: December 3, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92–31540 Filed 12–29–92; 8:45 am]

BILLING CODE 4310–84–M

published in the Federal Register of April 5, 1993, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 5, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1993.

Dated: July 28, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–18472 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, and 3850

[WO–660–4191–02–24–1A; Circular No. 2648]

RIN 1004–AC07

Rental Fees, Mining Claim Recordation, and Assessment Work

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule that was published Thursday, July 15, 1993 (58 FR 38186). The regulations promulgated by the rule related to the imposition of a $100.00 annual rental fee on unpatented mining claims on Federal lands.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Roger Haskins (702) 785–6576, or Frank Bruno (202) 653–5182.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction implemented provisions of the Interior Department and Related Agencies Appropriations Act of 1993 (the Act) that requires an annual rental fee of $100 for each mining claim and site located and held under the General Mining Law of 1872 for fiscal years 1993 and 1994. The final rule established the procedures for paying and administering the required annual rental fee, put into regulation the statute's mandatory payment deadlines and its mandatory provisions that failure to pay the rental fee on time constitutes abandonment of the claim or site, amended the recording and assessment work regulations to conform to the requirements of the Act, and established procedures by which small miners may obtain an exemption.

Need for Correction

As published, the final rule at § 3833.1–6(a)(4)(ii) did not account for the fact that mining activities are carried out on National Forest System lands under Notices of Intent as well as under Plans of Operations. Section 3833.1–6(a)(5) of the proposed rule published March 5, 1993, allowed a small miner to claim an exemption from the requirement to pay the annual rental fee based on a Notice of Intent to conduct operations on National Forest System lands (58 FR 12885). The reference to such notice was inadvertently omitted as a result of the amendment of the proposed section and the redesignation of part of the text of proposed § 3833.1–6(a)(5) as § 3833.1–6(a)(4)(ii) in the final rule. This correction notice, by adding the phrase "Notice or a" in § 3833.1–6(a)(4)(ii), captures the original intent of the proposed rule. Moreover, it is consistent with the requirements of the Act, which allows small miners to claim exemption from the payment of the annual rental fee on the basis of notices as well as on plans of operations.

Correction of Publication

Accordingly, the publication on July 15, 1993, of the final rule on Rental Fees, Mining Claim Recordation, and Assessment Work is corrected as follows:

Section 3833.1–6 is corrected by revising paragraph (a)(4)(ii) to read as follows:

§ 3833.1–6 Rental fee exemption qualifications.

* * * * *

(a) * * *

(4) * * *

(ii) A Notice or a Plan of Operations issued under parts 9 and 228 of title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

* * * * *

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–18438 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 69

[CC Docket No. 91–213, FCC 93–366]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted interim rules to govern the rate structure and pricing of the transport component of interstate switched access provided by local exchange carriers (LECs) to enable interexchange carriers (IXCs) to originate and terminate interstate traffic. We now reconsider and clarify certain issues on which guidance is needed before the LECs file their initial transport rates. Specifically, we address: (1) Application of the interim rate structure to certain configurations; (2) issues relating to the derivation of initial transport rates; and (3) clarification of implementation procedures. In addition, we are changing the date on which LECs are required to file tariff revisions incorporating the new transport rate structure and pricing rules from August 2, 1993 to September 1, 1993.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Sieradzki, Common Carrier Bureau, Policy & Program Planning Division, 202–632–1304.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's First Memorandum Opinion and Order on Reconsideration in CC Docket No. 91–213, adopted and released on July 21, 1993. This item reconsiders and clarifies matters addressed in Transport Rate Structure and Pricing, Report and Order CC Docket No. 91–213, 7 FCC Rcd 7006 (1992) (Transport Order or Order), 57 FR 54717 (Nov. 20, 1992).

The complete text of this First Memorandum Opinion and Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street NW., room 230, Washington, DC 20554.

Synopsis of First Memorandum Opinion and Order on Reconsideration

I. Rate Structure

A. Intermediate Hubbing

1. Hubbing permits access customers to use the network efficiently and increases opportunities for interexchange competition. Permitting hubbing is in the public interest. Accordingly, we are revising the rules to

Corrections

Federal Register
Vol. 58, No. 147
Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 930487-3161; I.D. 040593A]

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-16523 beginning on page 37660 in the issue of Tuesday, July 13, 1993, make the following corrections:

1. On page 37662, in the second column "PART 657" should read "PART 675".

2. On the same page, in the same column, in amendatory instruction 2, in the fifth line, "Figure 5" should read "Figure 2", in the sixth and seventh lines "Figure 2" should read "Figure 1", and after "Figure 1" remove "and adding in their place the words "Figure 1".

§ 675.2 [Corrected]

3. On the same page, in the third column, in § 675.2 (12), in the first line after "541" add double dashes.

§§ 675.2, 675.20, and 675.27 [Corrected]

4. On page 37663, in the third column, in amendatory instruction 5, in the third line, "work" should read "word".

§ 675.22 [Corrected]

5. On the same page, in the same column, in amendatory instruction 6, in the second and third lines, "figure 1" should read "figure 2".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3833

[WO-660-4191-02-24 1A; Circular No. 2648]
RIN 1004-AC07

Rental Fees, Mining Claim Recordation, and Assessment Work

Correction

In rule document 93-16689 beginning on page 38186 in the issue of Thursday, July 15, 1993, make the following correction:

§ 3833.1-7 [Corrected]

On page 38200, in § 3833.1-7(c), in the second line, "before October 6, 1992," should read "after October 6, 1992,".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

[RIN 2900-AF30]

Veterans Benefits; Eligibility or the Montgomery GI Bill—Active Duty

Correction

In proposed rule document 93-17455 beginning on page 39488 in the issue of Friday, July 23, 1993, make the following corrections:

§ 21.7972 [Corrected]

1. On page 39492, in the second column, in amendatory instruction 7, the first two lines should read "Sections 21.7073 and 21.7074 are redesignated as § § 21.7074 and 21.7075 and".

BILLING CODE 1505-01-D

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DEPARTMENT OF THE INTERIOR

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43 CFR Part 3833

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

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BILLING CODE 1505-01-D

Response: Our intention in issuing the regulation of August 12, 1992 was to include only items that clearly are self-executing. We appreciate the commenters observations and have also begun to prepare additional regulations that make necessary OBRA '90 revisions.

Regulatory Impact Statement

Since this document does not make any revisions to the final rule published on August 12, 1992, the regulatory impact statement needs no revision. We refer interested readers to that rule.

Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Confirmation of Final Rule

Neither the commenters' views nor our evaluation of issues they raised require revisions to the final rule with comment period published on August 12, 1992. Therefore, the final rule is confirmed without revision.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural area, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney disease, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 30, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–26877 Filed 11–01–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–610–4111–02–24 1A; Circular No. 2650]

RIN 1004–AA66

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 7: Disposal of Produced Water; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments and corrections.

SUMMARY: This document corrects errors and omissions in the final rule issuing Onshore Oil and Gas Order No. 7, Disposal of Produced Water, under the provisions of 43 CFR subpart 3164, published in the Federal Register on September 8, 1993 (58 FR 47354).

EFFECTIVE DATE: October 8, 1993.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: T.R. Beaven, (307) 775–6200, or Erick Kaarlela, (202) 452–0340.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections issued Onshore Oil and Gas Order No. 7—Disposal of Produced Water, which affects oil and gas operators on public lands, and governs disposal and beneficial use of waste water produced during oil and gas operations.

Need for Correction

As published, the final rule contained errors that may prove to be misleading and are in need of clarification. Some of the errors appeared in the chart in 43 CFR 3164.1(b), and others appeared in the test of the Order, which is an appendix to 43 CFR part 3160 and does not itself appear in the CFR.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands-mineral resources, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

The following correcting amendments are made in the final rule issuing Onshore Oil and Gas Order No. 7, Disposal of Produced Water, which was published on September 8, 1993 (58 FR 47354):

1. The authority citation for part 3160 is revised to read:

Authority: 43 U.S.C. 1733; 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 306; 25 U.S.C. 396, 396d, 398e, 399; 42 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*

Subpart 3164—Onshore Oil and Gas Orders

2. Section 3164.1(b) is amended by revising entries 6. and 7. of the table to read as follows:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	FR reference	Supersedes
6.	Hydrogen Sulfide Operations	Jan. 22, 1991	55 FR 48958	None.
7.	Disposal of Produced Water	Oct. 8, 1993	58 FR 47354	NTL–2B

The following corrections are made in the final rule issuing Onshore Oil and Gas Order No. 7, Disposal of Produced Water, which was published on September 8, 1993 (58 FR 47354):

3. On page 47361, middle column, correct the last line of the second full paragraph to read "clearance numbers 1004–0134 and 1004–0135."

Appendix—[Corrected]

4. On page 47362, left column, in section C., Scope, change "non-Federal leases" to read "lands other than Federal and Indian lands" in lines 5 and 6.

5. On page 47362, middle column, in section N., Toxic constituents, add the words "specified by Federal or State regulations" after "concentration" in line 3, and in the last line correct the reference "CFR 116" to read "CFR 261."

6. On page 47362, middle column, section D., Underground Injection Control (UIC), remove the word "waste" in line 5.

7. On page 47363, left column, the last two lines of the first partial paragraph before "2. Off-lease Disposal" are corrected to read "approve the proposal without the prior approval of the Forest Service."

8. On page 47363, middle and right columns, in the first paragraph of section D. Informational requirements for pits, remove the two sentences beginning in the next to last line of the middle column and ending in the third line of the right column that read "A reclamation plan should be included as appropriate. If requested, a contingency plan as prescribed by the authorized officer shall be provided."

9. On page 47363, right column, item D.1.e., at the end of line 2, add the phrase", and a copy of the appropriate disposal permit, if any."

10. On page 47364, right column, item F.1., correct the phrase "order or assessment of penalties" to read "order, assessments, or penalties" in lines 4 and 5.

11. On page 47365, left column, item , in line 2, add at the end of the first ntence a phrase to read as follows: ", r more often if required by the authorized officer in appropriate circumstances."

12. On page 47365, right column, Section IV., remove the phrase "or State" in the last line of the paragraph.

Dated: October 22, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–26879 Filed 11–1–93; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–182; RM–8269]

Radio Broadcasting Services; Columbiana, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 268A to Columbiana, Alabama, as the community's first local aural transmission service, in response to a petition for rule making filed on behalf of Columbiana Broadcasting Company. See 58 FR 37696, July 13, 1993. Coordinates used for Channel 268A at Columbiana are 33–10–04 and 86–38–45. With this action, the proceeding is terminated.

DATES: Effective December 13, 1993. The window period for filing applications on Channel 268A at Columbiana, Alabama, will open on Dec. 14, 1993, and close on January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 268A at Columbiana should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–182, adopted Oct. 12, 1993, and released Oct. 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Columbiana, Channel 268A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–26865 Filed 11–1–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–160; RM–8238]

Radio Broadcasting Services; Window Rock, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C1 for Channel 276A at Window Rock, Arizona, and modifies the authorization for Station KHAC–FM to specify operation on the higher powered channel, as requested by Western Indian Ministries, Inc. See 58 FR 34025, June 23, 1993. Coordinates for Channel 274C1 at Window Rock are 35–35–00 and 109–02–00. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 13, 1993.

#F2652

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3180

[WO-610-4111-02-2411-24 1A; Circular No. 2652]

RIN 1004-AB73

Onshore Oil and Gas Unit Agreements: Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends several administrative provisions in the regulations that govern Federal onshore oil and gas exploratory unit agreements. The rule codifies Bureau of Land Management (BLM) policy, made effective on January 29, 1990, that all such unit agreements approved by BLM after that date shall provide for payment to the Government of royalties on production from any participating area (PA) containing unleased Federal lands. A second rule change clarifies the effective date of Federally-approved unit agreements, and a third change provides for consistency in the appeals process under parts 3160 and 3180 of 43 of the regulations.

EFFECTIVE DATE: December 2, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (610), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653-2133, or Wayne Stevens, (916) 978-4735.

SUPPLEMENTARY INFORMATION: The Federal Government sustains a loss of royalty income when unleased Federal lands within a unit participating area (PA) are drained by producing wells on non-Federal tracts or on Federal tracts producing under a lower royalty rate. The BLM attempts to avoid this revenue loss by leasing these lands and having them committed to the unit agreement, but it is sometimes unable to do so for reasons beyond its control. For example, the lands may be in a wilderness area or withdrawn from mineral leasing for some other reason.

The public interest requires the United States to be assured of compensation for such lost royalty revenue, and on February 4, 1992, a rule was published proposing to require the inclusion of a royalty compensation provision in all subsequent Federally-approved exploratory unit agreements. 57 FR 4220. In order to standardize this royalty payment provision, we proposed revision of sections 12 and 17 of the model form for Federal exploratory unit agreements at 43 CFR 3186.1. Although the new royalty compensation provision will be included in all new Federally-approved agreements for unproven areas, it will affect only those units containing unleased Federal land within a PA.

Comments on the proposed rule changes were received from 8 parties. Most comments supported the rule and suggested changes intended to clarify certain aspects of the proposal. Two comments, however, contend that BLM lacks the statutory authority to condition unit approval on the inclusion of a royalty payment provision for unleased lands in the unit agreement. These comments further assert that Congress has limited the authority of the Secretary to protect public lands from drainage to two means: either to lease the unleased lands that are being drained, or to negotiate voluntary agreements pursuant to 30 U.S.C. 226(j), and then only those who have drilled wells on adjacent lands. However, the very Interior Board of Land Appeals (IBLA) cases cited in the comments—*Nola Gay Ptasynski*, 63 IBLA 240 (1982) and *Bruce Anderson*, 80 IBLA 286 (1984)—refute this assertion by invoking a third mechanism available to the Secretary: assessing compensatory royalty against a Federal lessee as damages. In any event, this rule constitutes an exercise of authority under paragraph (m) of section 226. The Department does not rely on paragraph (j), which was cited as additional authority in the preamble to the proposed rule. Therefore, the Secretary need not be subject to the limits of paragraph (j)—that the lands be adjacent and negotiated agreements voluntary.

The comments city *Ptasynski* and *Anderson* for the proposition that actual drainage is a prerequisite to insisting on provisions in a unitization agreement to assure adequate compensation. However, these cases do not address Secretarial disapproval of unit agreements, but rather the very different issue of assessment of damages for losses already suffered. This rule does not seek to assess damages. Therefore, the cases are not applicable.

The Mineral Leasing Act requires BLM to approve a unit agreement involving Federal lands only when it determines that such approval is in the public interest (30 U.S.C. 226(m)). Congress did not intend BLM to approve drainage of unleased Federal lands by the unit operator with compensation, and did not intend that the owner of adjacent lands should have the discretion to refuse to compensate the Government when seeking BLM approval of a unit agreement for production from Federal lands. The BLM has determined that protecting the Federal royalty interest in unleased unit lands in the manner described in this rule is necessary to serve the public interest. This rule advises those who may seek the Department's approval of a unit agreement, whether before or after production has commenced, as to how it will apply this public interest test of 30 U.S.C. 226(m) to proposed agreements affecting unleased Federal acreage. See *Coors Energy Co.*, 110 IBLA 250 (1989), in which a concurring opinion stated that the Secretary could adopt a regulation providing for the sharing of production income with unleased Federal lands in a PA. 110 IBLA at 263 (Burski concurring).

Some respondents argued that the rule might serve as a disincentive for the Government to lease its unleased lands and that the rule should, therefore, provide for expedited leasing of the affected lands. The BLM has issued policy directives to its field offices to expedite the leasing of all unleased lands at the designation stage of unit formation. This involves offering available BLM-administered lands for lease at the next scheduled lease sale, and requesting the consent of other Federal agencies to offer their affected lands for lease as soon as possible. There is no need to include such internal policy direction in the agency's regulations.

Several comments suggested that limits be placed on the applicability of the royalty rule. One respondent thought that the royalty rule should apply only where actual drainage of unleased lands had been proven. Requiring such actual proof of drainage is unnecessary for lands within a PA. When proposing lands for inclusion in a PA, there is a presumption that such lands are underlain by a common reservoir. Furthermore, tract participation in a PA is normally determined by a simple surface acreage formula rather than by any proven occurrence of drainage. The manner of assessing royalty compensation under the rule is consistent with the approach. Other comments suggested the rule apply to Federal units but not to those units formed under a non-Federal form of unit agreement where Federal lands comprise less than ten percent of the unit area. The BLM's public interest obligations cover all Federal lands in exploratory units, not just those supervised under a Federal form of unit agreement. The rule applies to all exploratory unit agreements submitted

for Federal approval, regardless of the percentage of Federal participation. A final suggestion would exempt from the rule Federal lands that the Government has withheld from leasing. This suggestion was not accepted since it would offer no real protection of the Federal royalty interest in those situations the rule attempts to address, i.e., where the BLM is unable to lease a tract for administrative or statutory reasons, but unit production depletes Federal resources.

One comment requested clarification of the interplay between the proposed regulation and 43 CFR 3100.2 and 3162.2. In fact, there is no direct relationship: Each addresses a separate matter. Sections 3100.2 and 3162.2 govern the obligation of lessees and operators to protect the United States from drainage from leased tracts. That obligation may be satisfied by the joinder of the lease to a unit approved by the Secretary. This rule addresses the very different issue of the approval of a unit that includes unleased lands in its area.

Some comments urged that the royalty rate for unleased lands should be subject to reduction pursuant to 43 CFR 3103.4–1. Under a recent amendment of 43 CFR 3103.4–1, made effective September 10, 1992, a PA is considered a stripper oil well property if it meets the criteria spelled out in that subpart of the regulations, and all participating Federal leases are eligible for royalty rate reduction. Therefore, any royalty assessed under § 3181.5 for unleased Federal lands in a unit PA that qualifies as stripper well property is eligible for rate reduction as well.

Several comments suggested that the BLM should grant suspensions of operations and/or production for leased lands in an anticipated PA whenever adjacent Federal lands are unleased and cannot be leased within a reasonable period of time. This would help when the operator must spud a unit well in order to save leases nearing expiration but is reluctant to do so because of the nearby unleased lands. This matter is outside the scope of this rule, but such suspensions may be considered under BLM's existing authority to grant suspensions as prescribed in 43 CFR 3103.4–2, 43 CFR 3165.1, and in section 18(c) of the model Federal form for unit agreements for unproven areas at 43 CFR 3186.1. As noted earlier, the BLM will make every attempt to lease unleased Federal tracts as early in the unit approval process as possible.

Some respondents were concerned about how the final rule will deal with subsequent joinders—the commitment of a working interest after an agreement has been executed. The BLM has no intention of dictating the terms of joinder to the parties to the unit operating agreement. Such matters as cost and revenue sharing are properly the contractual concerns of the affected parties.

One comment stated that an early version of the royalty compensation provision issued under BLM's interim policy was ambiguous as to which lands and which parties would be subject to the royalty payment provision. It was BLM's intent when it issued the model agreement language of the 1990 interim policy that royalty payment under this provision will be required only for those unleased Federal lands located within the boundary of the PA, that is, those lands that would be entitled to allocated production from the PA if they were leased and committed to the unit agreement. Existing unit agreements that incorporate the earlier language will be so interpreted. The respondent also stated that the terminology used in the draft proposal for lands that are subject to the unit agreement was inconsistent and confusing. The BLM uses the terms "unitized tracts," "unitized lands," and "committed tracts" interchangeably in describing lands for which the basic royalty and working interest owners have committed their interests to the unitization agreement. These terms exclude unleased Federal tracts which, in this context, have no working interest.

Several comments addressed the proposed method of allocating production for royalty purposes and the possibility that the rule would be applied inconsistently. The BLM acknowledges that, while the new rule is simple in principle, it is more complex to explain. Much of this complexity grew out of the attempt to ensure that parties subject to a royalty liability for production attributable to unleased Federal acreage would not be required to pay a double royalty on that production. The BLM's primary concern is to protect the Federal royalty interest in unleased unit lands. The rule does this. However, it would be inappropriate then to dictate in the rule the specific accounting procedure to be used in meeting the Federal royalty obligation. This intentional omission apparently created confusion regarding who is responsible for paying the royalties on unleased Federal lands. The basic intent of the regulation is to capture the windfall royalties on production from unleased Federal lands now paid to other lessors in the PA. To accomplish this, we have implemented a two-phase allocation of production for settlement of the Federal royalty only. In the first phase, a prorated share of production is allocated to the unleased Federal acreage in the PA. Once the specified royalties on that production are paid to the Government, the remaining seven-eighths nonroyalty portion is returned to working interest owners, with no further obligation to pay royalties on that production to either the Government or to any other lessor in the PA. The texts of § 3181.5 and of sections 12 and 17 of the model unit agreement have been amended to clarify this point.

Several comments noted that special tract identification and royalty collection procedures are needed for the Minerals Management Service (MMS), the agency responsible for royalty collections on oil and gas produced from or allocated to Federal lands. While the MMS has not yet developed formal regulations that deal with royalty payments for unleased lands, it has procedural guidelines in effect that address unit agreements containing the royalty collection provision. Formal revision of the 30 CFR part 206 regulations may be considered at a later time.

The BLM also proposed revising § 3183.4 of the unit regulations to specify the effective date of an approved unit agreement as being the date the authorized officer signs the Certification-Determination addendum to the agreement. In commenting on this change, two parties stated that the authorized officer has too much discretion as to the time frame for unit approval and suggested that a specific period be provided within which the authorized officer is required to make a decision. We believe placing such a time limitation in the regulations might impair the authorized officer's ability to complete a proper review of the unit proposal, particularly in cases where more extensive review and coordination than usual are needed before final approval can be granted. However, the BLM will expedite the processing of any unit proposal that involves leases nearing expiration. The amendment of § 3183.4 is adopted as set forth in the proposed rule.

Finally, BLM proposed revising § 3185.1, Appeals, in order to make that section consistent with § 3165.3, which governs administrative appeals on matters related to onshore oil and gas lease operations in general. The change would require aggrieved parties who wish to appeal a decision of the authorized officer under the unit regulations in part 3180 to request a State Director review before pursuing an appeal to the IBLA. Two conflicting comments were received on this

proposal. One comment endorsed the proposed change, noting that review by the Interior Board of Land Appeals (IBLA) is a lengthy process and that the BLM State Director may be able to resolve some problems and avoid the need for IBLA involvement. However, another comment questioned whether State Director review prior to IBLA review is required even under § 3165.3. The latter reviewer suggested that appeal procedures under both §§ 3165.3 and 3185.1 be revised to allow an aggrieved party the choice of seeking either State Director or IBLA review. The IBLA in *Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club*, 122 IBLA 283 (March 5, 1992), examined this question and concluded that State Director review must be sought before an appeal may be taken to the Board. Although this case related to applications for permit to drill, the IBLA cited the applicability of the State Director review requirement to a broader class of instructions, orders, and decisions of the authorized officer. Consequently, any party appealing such action of the authorized officer, under § 3185.1, must first seek State Director review before filing an appeal with the Board.

For the reasons set forth in the proposal and in this document, we are adopting the regulatory amendments contained in the proposed rule with the modifications discussed herein and with minor nonsubstantive changes for clarity.

The principal author of this final rule is Wayne Stevens of the Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the ten criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Since BLM will attempt to lease all unleased Federal tracts in proposed exploratory units prior to unit approval, it is anticipated that there will be relatively few approved exploratory units that contain unleased Federal lands within their producing (participating) areas. As a result, the rule will have little effect on costs or prices for consumers, nor would there be a need for increasing Federal, State, or local agency budget or personnel requirements. The rule will not have a gross annual effect on the economy of more than $100 million, nor will it cause major increases in costs or prices for any private or government sector of the economy.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule favors no demographic group, imposes no direct or indirect costs on small entities. Because the requirement for payment of compensatory royalties will be actually invoked in only a small number of Federal exploratory units, this rule will not have a significant effect on a substantial number of small entities.

The rule will result in no taking of private property; private property is not affected by the rule. The rule pertains only to the terms under which Federal oil and gas leases may be committed to unit agreements in the future, and merely ensures that the Federal Government receives compensation when its oil and gas resources are produced from a unit well. Therefore, as required by Executive Order 12630, the Department of the Interior has determined and certifies that the rule will not cause a taking of private property and is not a governmental action capable of interference with constitutionally protected property rights.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 3180

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, and for the reasons stated in the preamble, part 3180, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: September 14, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS—[AMENDED]

1. The authority citation for 43 CFR part 3180 is revised to read as follows:

Authority: 30 U.S.C. 181 and 226.

Subpart 3181—Application for Unit Agreement—[Amended]

2. Section 3181.5 is added to read as follows:

§ 3181.5 Compensatory royalty payment for unleased Federal land.

The unit agreement submitted by the unit proponent for approval by the authorized officer shall provide for payment to the Federal Government of a 12½ percent royalty on production that would be attributable to unleased Federal lands in a PA of the unit if said lands were leased and committed to the unit agreement. The value of production subject to compensatory royalty payment shall be determined pursuant to 30 CFR part 206, except that no additional royalty shall be due from any lessee benefiting from a share in the production attributable to the unleased Federal lands.

Subpart 3183—Filing and Approval of Documents—[Amended]

3. Section 3183.4 is amended by revising paragraph (a) to read as follows:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (see § 3186.1 of this part for an example), and the unit agreement shall not be deemed effective until the authorized officer has executed the Certification-Determination document. No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

* * * * *

Subpart 3185—Appeals [Amended]

4. Section 3185.1 is revised to read as follows:

§ 3185.1 Appeals.

Any party adversely affected by an instruction, order, or decision issued under the regulations in this part may request an administrative review before the State Director under § 3165.3 of this title. Any party adversely affected by a decision of the State Director after State Director review may appeal that decision as provided in part 4 of this title.

Subpart 3186—Model Forms [Amended]

5. Section 3186.1 is amended by revising section 12 of the model unit agreement, and by redesignating the existing text of section 17 of the model unit agreement as paragraph (a) and adding a new paragraph (b) to section 17, to read as follows:

§ 3186.1 Model onshore unit agreement for unproven areas.

* * * * *

12. Allocation of Production. All unitized substances produced from a participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, or for repressuring or recycling in accordance with a plan of development and operations that has been approved by the AO, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts or unitized land and unleased Federal land, if any, included in the participating area established for such production. Each such tract shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land and unleased Federal land, if any, included in said participating area. There shall be allocated to each working interest owner of a tract of unitized land in said participating area, in addition, such percentage of the production attributable to the unleased Federal land within the participating area as the number of acres of such unitized tract included in said participating area bears to the total acres of unitized land in said participating area, for the payment of the compensatory royalty specified in section 17 of this agreement. Allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, including compensatory royalty obligations under section 17, shall be prescribed as set forth in the unit operating agreement or as otherwise mutually agreed by the affected parties. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein, regardless or whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

17. Drainage.

* * * * *

(b) Whenever a participating area designated under section 9 of this agreement contains unleased Federal lands, the value of 12½ percent of the production that would be allocated to such Federal lands under section 12 of this agreement, if such lands were leased, committed, and entitled to participation, shall be payable as compensatory royalties to the Federal Government. Parties to this agreement holding working interests in leases within the applicable participating area shall be responsible for such compensatory royalty payment on the volume of production reallocated from the unleased Federal lands to their unitized tracts under section 12. The value of such production subject to the payment of said royalties shall be determined pursuant to 30 CFR part 206. Payment of compensatory royalties on the production reallocated from unleased Federal land to committed Federal tracts within the participating area shall fulfill the Federal royalty obligation for such production, and said production shall be subject to no further Federal royalty assessment under section 14 of this agreement. Payment of compensatory royalties as provided herein shall accrue from the date the committed tracts in the participating area that includes unleased Federal lands receive a production allocation, and shall be due and payable monthly by the last day of the calendar month next following the calendar month of actual production. If leased Federal lands receiving a production allocation from the participating area become unleased, compensatory royalties shall accrue from the date the Federal lands become unleased. Payment due under this provision shall end when the unleased Federal tract is leased or when production of unitized substances ceases within the participating area and the participating area is terminated, whichever occurs first.

* * * * *

[FR Doc. 93-26878 Filed 11-1-93; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2200

[AA–260–4212–02 24 1A; Circular No. 2653]

RIN 1004–AB28

Exchanges—General Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements primarily the exchange provisions of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of August 20, 1988. Also, the rule implements other authorities and procedural requirements that are applicable to Federal Land Policy and Management Act land exchanges. The principal provisions in the rule pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

EFFECTIVE DATE: December 17, 1993.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Don Simpson or Dave Cavanaugh, (202) 653–9215.

SUPPLEMENTARY INFORMATION: The purpose of the Federal Land Exchange Facilitation Act of August 20, 1988 (Pub.L. 100–409)(hereafter referred to as the Act), is to facilitate and expedite certain land exchanges under the authority of the Secretary of the Interior and the Secretary of Agriculture by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate land ownership for more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use management; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

On October 2, 1991, the Bureau of Land Management (BLM) and the Forest Service published separate proposed rules in the Federal Register (56 FR 49948–49977), with 60-day comment periods. The proposed rules were intended to implement the amendments made by the Act to section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716)(FLPMA), and to incorporate other authorities and procedural requirements applicable to each agency. Included in the rules were provisions to streamline and expedite exchanges involving Federal and non-Federal lands such as exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

The BLM and Forest Service received comments from 58 sources, including: 6 individuals, 18 business and industrial entities, 2 civic organizations, 2 environmental organizations, 2 professional societies, and 28 Federal, State, and local government entities.

All comments received on the rules were shared and jointly analyzed by the BLM and Forest Service. The analysis of comments pertaining to the BLM rule, and the corresponding responses and changes, are discussed as follows. Editorial and grammatical corrections also have been made as necessary.

General Comments

Two commenters stated that the time frames in the rule are too lengthy, particularly those related to the initiation and review process. The time periods specified in various sections of the rule were either imposed by the Act or administratively required to comply with BLM's public participation and environmental analysis procedures. Additionally, the BLM and the Forest Service have made further adjustments in their scheduling requirements to develop more uniform regulations and reduce the time periods wherever possible.

A respondent felt that streamlining the process to expedite the processing of exchanges may promote rapid disposal of Federal holdings in urbanized areas and forgo revenue-making opportunities on those properties. It was further suggested that a process for mid-course review at the highest departmental levels be built into the regulations. Land management agencies generally do not administer lands for intense development in urban areas. However, each exchange opportunity must be analyzed on an individual basis. Certain high-value or complex exchanges may involve Secretarial review, but to require a mid-course review of all exchanges would create unnecessary delay.

A commenter expressed concern that the appraisal provisions did not lend themselves to land exchanges involving mineral interests, particularly those exchanges in Alaska. It was suggested that there be sufficient discretion in the rules to permit land exchanges where there has been insufficient exploration data to permit valuation by standard appraisal methods. The standard appraisal process is less reliable when there is very little exploration data or market information available to estimate market value reliably. Consequently, § 2201.3–2(b) of the proposed and final rule gives the authorized officer discretion to use other methods when this is the case.

It was pointed out by one commenter that there is no provision in the rule for conducting public hearings. In conjunction with the written notification requirements in §§ 2201.2 and 2201.7–1 of the rule, the BLM authorized officer may hold public hearings or public meetings whenever appropriate to solicit information from the public. The need to conduct hearings or meetings will vary depending on the level of interest and potential controversy associated with a land exchange. Therefore, a separate provision to cover public hearings, meetings, etc. is unnecessary.

One commenter suggested the preparation of an "environmental values document" to compare relative ecological values to be exchanged. All resource values associated with the lands involved in an exchange are examined through an environmental analysis pursuant to Council on Environmental Quality regulations and Departmental and BLM directives. Therefore a separate "environmental values" document is not required.

Specific Comments

Part 2090 Special Laws and Rules

Section 2091.2–2 Opening

One respondent felt the section will restrict management of minerals by eliminating the "ability to lease minerals." The same respondent felt the value of the Federal parcel offered in the exchange would be less because of this "restriction." It does remove leasing as a management option, but only until rules are promulgated. The value of the lands is based on the highest and best use, and where mineral development is the highest and best use, the values of the mineral(s) will be reflected in the appraised value. No change was made

in the final rule in response to these comments.

Section 2091.3–1 Segregation

Respondents suggested correcting the reference to lands administered by the Forest Service by inserting the word "Forest" between the words "National" and "System." One further suggested adding a citation of the pertinent BLM and Forest Service regulations at the end of the section. Both of these suggestions have been adopted in the final rule.

Section 2091.3–2 Opening

One commenter suggested using consistent wording regarding the segregation of reserved minerals from the mining laws in this section and § 2201.1–2. Section 2201.1–2 of the final rule has been revised to make these two sections consistent.

One comment recommended "deleting (c) of this section because the segregation and opening is by operation of law as discussed in § 2091.3–1 supra." This paragraph is deleted as suggested in the final rule.

Section 2200.0–5 Definitions

One commenter expressed concern with the use of the term "eminent domain" in the definition of "acquisition" because of the negative implications associated with condemnation and the erosion of private property rights. The definition of acquisition has been deleted from the rule.

One commenter recommended that language be added at the end of the definition of "agreement to initiate" to clarify that the signing of such agreement is not required for preliminary discussions between the parties to assess the feasibility of an exchange. No revision to the definition was considered necessary because § 2201.1(a) and (b) of the rule allow the parties to assess the feasibility of an exchange proposal before entering into an agreement to initiate.

It was recommended that the definition of "approximately equal value" be replaced with the Small Tracts Act (43 U.S.C. 682a) regulation definition in 36 CFR 254.31 or that the Small Tracts Act definition be amended by these rules. The definition in the rule was revised to conform with the definition in the Small Tracts Act regulations.

One commenter recommended that the definition of "bargaining" include other issues such as minerals, access, [illegible]ations, etc. This suggestion was adopted because § 2201.4(a)(1) of the rule states that bargaining shall be based upon an objective analysis of the valuation in the appraisal report(s). An appraisal will take into account all factors that might influence the value of the estate to be conveyed.

One commenter stated that the definition of "highest and best use" may be too broad and recommended that the phrase "and present use of surrounding and/or adjacent property" be added after the words "based on market evidence." Use of nearby property is always considered by the appraiser in determining the highest and best use, but limiting consideration to adjacent properties could result in inaccurate estimates of value. Therefore, no change was made to the definition in the final rule.

It was suggested that the definition of "market value" include mineral and timber interests, archaeological sites, and cultural resources. Market value is an estimate of the price that lands or interests in lands would bring in a competitive market. Interests in lands, such as timber or cultural resources, are valued accordingly. Section 2201.3–2 of the final rule identifies the various interests that may be considered in estimating market value.

One commenter asked if the mineral leasing laws under the definition of "mineral laws" include the Act of March 4, 1917, involving mineral resources on Weeks Act (16 U.S.C. 480, 500 *et seq.*) lands. "Mineral laws," as used in this rule, are identified for the purposes of segregation under §§ 2201.1–2 and 2201.9(b). Since segregation applies only to those lands reserved from the public domain for National Forest purposes, mineral prospecting and leasing on acquired lands with Weeks Act status are not included in the definition of "mineral laws."

It was recommended that the definition of "party" be amended to recognize States as full parties to an exchange. The definition in the proposed rule clearly recognized States as being eligible to enter into an agreement to initiate an exchange and is adopted without change in the final rule.

One commenter recommended that the definition of "segregation" be amended to clarify that Federal lands may be segregated from operation of the public land laws "and/or" mineral laws. The commenter suggested adding the phrase "or by operation of law" after the word Secretary, presumably to reflect the automatic segregation of lands acquired through exchange provided by the Act. The purpose of segregation is to avoid the appropriation or long-term encumbrance of Federal lands being considered for conveyance in an exchange. The intent is to segregate from appropriation under both the public land laws and the mineral laws. The term "by operation of law" was not added to the final rule because the authority for segregation, and the authority to exchange for non-Federal lands that would automatically be segregated under the Act, lies with the Secretary.

A commenter indicated that the definition of "statement of value" did not appear to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and could place appraisers at risk in violating their professional standards if they produced a statement of value rather than a full appraisal report. The regulations only require the qualified appraiser to determine if the value of Federal lands exceeds $150,000; they do not require a formal appraisal report. It is expected, however, that the appraiser's analysis will meet the minimum standards contained in the USPAP.

One commenter suggested language and recommended that the definitions of "resource values" and "management objectives" be added to clarify the determination of public interest under § 2200.0–6 (b)(1) and (b)(2) of the rule. A definition of resource values has been included in the final rule; however, the term "management objectives" was not added because it is used consistent with the common definition of the two words.

It was suggested that the term "presence of environmental values" be defined in the rule and that the definition address cultural resource values and the associated costs of survey, mitigation, tests, excavations, etc. to ensure that such values are not overlooked in the exchange process. Section 2200.0–6 of the rule mentions cultural resources as one of several factors to be considered in the determination of public interest, and § 2201.1–3 of the rule allows for compensation for costs associated with cultural resource surveys and mitigation. Additionally, § 2200.0–6(h) of the rule requires that an environmental analysis be prepared. This analysis will ensure that environmental values such as cultural resources are not overlooked in the determination of public interest. No changes were made in the final rule in response to this comment.

Section 2200.0–6 Policy

(a) *Discretionary nature of exchanges.* One commenter recommended that this paragraph be amended to clarify that the decision of the Secretary when

determining public and State interest is subject to review. This section of the rule requires consideration of the needs of State and local residents. Section 2201.7–1(c)(1) of this rule sets forth the requirements for public notice of decisions and subsequent review. No changes were made in response to this comment.

(b) *Determination of public interest.* One commenter suggested that protection of watersheds be listed as a criterion in the determination of public interest. This suggestion was adopted.

It was suggested that the term "best served" be used instead of "well served." The same commenter pointed out that there was nothing in the regulations on what type of lands would be acquired and suggested a list of lands most desirable. The term "well served" is retained in the final rule because it is the term used in section 206(a) of FLPMA. It would be impracticable to list types of lands that should be acquired through exchange, due to the variety of resources on involved lands. Identification of types of lands to be acquired is more appropriate during the land use planning process.

One commenter stated that the phrase "accommodation of land use authorizations" was ambiguous and suggested wording to ensure that right-of-way corridors for energy transportation and utility purposes are considered in the determination of public interest. The suggestion was adopted by expanding the term "authorized uses" in § 2201.1(c)(4) of the rule to include grants, permits, easements or leases.

One commenter recommended that the management and development of private lands be emphasized in this section and suggested wording for inclusion into the final rule. Additionally, two commenters recommended that this section include an analysis of a State's economic needs and that the rationale and decision of the authorized officer be included in the public record. They specifically requested that additional regulatory requirements be imposed to provide an analysis of coal development, the feasibility of future leasing, and any possibility of royalty losses and the attendant impacts to States. This section of the final rule was revised to read "* * * to meet the needs of State and local residents and their economies * * *" to emphasize the importance of these public interest criteria. The "notice of exchange proposal" at § 2201.2 of the rule allows the public to participate early in the exchange process and to identify any issues or concerns it may have regarding an exchange proposal. This could include issues such as mineral resource development potential on the involved Federal lands, the potential loss of royalties, and the related impacts to State and local economies. The information received in response to the notice of exchange proposal will be considered in the development of an environmental analysis. The environmental analysis and related studies will serve as the basis for the "notice of decision" at § 2201.7–1 of the rule. This decision and all supporting documents will be included in the public record.

Another respondent suggested adding coal as a specific value to be considered. This is not necessary since coal is included within the reference to mineral values throughout the rule.

A local government suggested that an exchange should not be approved if it may adversely affect recreation, open space preservation, habitat, air quality or other resources. No change was made in response to this suggestion since potential impacts must be considered in the environmental analysis pursuant to § 2200.0–6(h) of the rule and a decision to proceed with an exchange must consider any adverse impacts identified in the analysis.

A State government respondent stated that Regional Coal Teams should be provided the opportunity for full participation in reviewing any exchange proposal. When processing exchanges involving coal, the appropriate Regional Coal Team shall have a major role in reviewing the exchange. However, it is impracticable to list in the rule all of the entities that should be given review opportunities.

One respondent suggested that the provision that provides that the intended use of conveyed Federal land not be in conflict with management objectives of adjacent Indian Trust lands be removed or limited to those uses of conveyed Federal lands that conflict with management objectives of "adjoining" Indian Trust lands that were established formally prior to that exchange proposal. This suggestion has been partially adopted by inserting the words "significantly conflict with established" before "management objectives" in § 2200.0–6(b)(2).

A local government respondent suggested that as a condition of exchange the Federal lands that may be used for landfills that may affect air quality use LAER (lowest achievable emission rates) technology, not the less stringent BDT (best demonstrated technology). Rather than prescribing specific technologies in this rule, appropriate methods of analysis of air quality and other considerations will be identified as proposals are developed. Public input will be considered in selecting assessment methods.

In order to meet the needs of State and local residents, wording was suggested that would require a determination regarding the consistency of the intended use of conveyed Federal lands with local government zoning and other land use plans for adjacent non-Federal lands. The authority of State and local governing bodies to regulate and zone non-Federal land, including land that has been conveyed from Federal ownership, is recognized in § 2200.0–6(i) of the rule. Therefore, no change has been made in response to this suggestion.

Five commenters felt that the requirement that the land exchanged into non-Federal ownership be used or managed to conform to or enhance adjacent Federal land uses was costly, inequitable, unfair or may otherwise limit exchange opportunities. It would not be in the public interest to convey lands out of Federal ownership if the intended use were to create substantial management conflicts with adjacent Federal lands; therefore, this provision is retained in the final rule. The language of § 2200.0–6(b)(2) of the rule does not imply control over future uses or place any requirement on the management of the Federal land after conveyance to the non-Federal party, unless specific reservations, covenants, or restrictions are included in the deed or patent pursuant to § 2200.0–6(i) of the rule. This section simply requires the authorized officer to consider the intended use in making the public interest determination.

One respondent felt that the two-part finding of public interest must be broad enough to encompass all management objectives contemplated and that emphasis not be placed on noncommodity resources. Section 2200.0–6(b) is sufficiently broad to include all involved resource values and all identified management objectives. Further, a definition of "resource values" has been added to § 2200.0–5 of the rule. That definition includes both commodity and non-commodity values, surface and subsurface.

It was requested that the reference to cultural resources be strengthened in the final regulations. Cultural resources is specified as a resource to consider in reaching a public interest determination. No change in the final rule is necessary.

Another suggested the words "promotion of" be changed to "continuation of." The language of the proposed rule has been retained because

section 2(a)(1) of the Act found that land exchanges are an important tool for "the ...ption of multiple-use values." ...ncern was expressed that the regulation "* * * guts the entire public interest test set forth in FLPMA," and a recommendation was made to delete the section. The Department disagrees. Section 206(a) of FLPMA provides a listing of considerations to be "included" in any public interest determination. That listing also includes "better Federal land management and the needs of State and local people." Section 2(a)(1) of the Federal Land Exchange Facilitation Act further states the findings and declaration of Congress, from which were drawn most of the public interest criteria of § 2200.0–6(b) of the rule.

(c) *Equal Value Exchanges.* One commenter recommended that this paragraph be amended by adding "Equal value can include the use of a public interest finding as authorized by specific statutes such as the ANILCA (Alaska National Interests Lands Conservation Act) (16 U.S.C. 3192)." This suggestion cannot be adopted. Section 206(b) of FLPMA requires equal value exchanges on a monetary basis. The elements of a public interest finding may be considered in the valuation of a property, only to the degree that those ...ents are reflected in the real estate ...t.

...was suggested that a cross reference to the provisions for approximately equal value exchanges in § 2201.5 be included in this section. This suggestion was adopted.

(d) *Same State Exchanges.* Four commenters recommended that this paragraph be amended to allow for interstate exchanges. This suggestion cannot be adopted because section 206(b) of FLPMA requires that the Federal and non-Federal lands involved in an exchange be located in the same state.

(e) *O & C Land Exchanges.* One commenter suggested an amendment to this paragraph to clarify that non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands shall be located in "any one of the 18 counties" in which the original grants were made. This suggestion was adopted.

(f) *Congressional Designations.* One respondent felt it was unclear if these regulations considered those areas outside the California Desert Conservation Area that have been ...ed by statute but are not National ...ervation Areas or National ...reation Areas. No change has been made in response to this comment. The listing of systems and areas in this section was taken directly from the Act. Lands acquired within areas created by statute but not listed in the Act will not become part of the unit or area under this rule.

It was suggested that in line 2 the words "United States" be deleted and replaced with "authorized officer." Title is accepted by the authorized officer on behalf of and in the name of the United States. No change has been made in the final rule in response to this comment.

(g) *Land and Resource Management Planning.* Several commenters felt the rule limited the consideration of exchange proposals to those consistent with existing agency land management plans. Agency plans can be amended to recognize new information or changes in conditions. The reference in the rule to land use plans includes plans that have been amended in response to new information or changes in conditions that may surface in conjunction with or following an exchange proposal.

Another respondent felt that the regulations should not require that land use plans specifically authorize an exchange of Federal land, stating that the land use plan could not foresee all exchange proposals. The rule does not require that a land use plan specifically authorize an exchange, but only that an exchange proposal be consistent with the goals and objectives of the plan. No change was made in the final rule.

Concern was expressed that there were no provisions for identifying non-Federal lands for exchange and initiating contact with the private landowner. This suggestion was not incorporated in the final rule because land use plans identify areas or specific tracts of non-Federal lands that the agency is interested in acquiring to effect consolidation. Private landowners have the opportunity to provide input in the planning process to help identify long-range goals and opportunities to exchange lands. Since exchanges are voluntary, both the non-Federal landowner and the United States must agree to the exchange.

One commenter questioned whether BLM lands suitable for exchange to benefit the Forest Service are identified in BLM planning or in Forest Service planning and, if it is BLM's responsibility, how BLM proposes to determine public interest. It was suggested that it be identified in the BLM planning process. The Forest Plans do not identify BLM lands to be used in exchanges. Such exchanges occur only after negotiations between the non-Federal party and the agencies and must be consistent with BLM land use plans. The public interest determination will be made by BLM using criteria specified in § 2200.0–6(b). No change was made in the final rule in response to this comment.

(h) *Environmental Analysis.* One respondent noted that this paragraph does not invite the public to submit comments on the environmental consequences of the proposed land exchange. The Council on Environmental Quality regulations implementing the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*)(NEPA) and BLM policy and procedures referenced in paragraph (h) already address public notice and comment on environmental documents; therefore, it is not necessary to restate the specific requirements in the final rule. In addition, § 2201.2 of the rule provides for public notice of the proposed exchange, with an opportunity for the public to submit timely comments that shall be considered in the environmental analysis of the proposed exchange.

A concern was expressed that compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 469–470) is not mentioned under this section of the rule. Cultural resources is only one of the many significant resources that must be considered. This rule does not limit or exclude any resources from consideration.

(i) *Reservations or restrictions made in the public interest.* Several commenters questioned the need and authority for reservations or restrictions in the conveyance of Federal land. Two commenters suggested that reservations or restrictions are not needed if the exchange is in the public interest. Another commenter suggested conveying partial interests to third parties in lieu of reservations or restrictions. Two commenters were concerned with the burden placed on the Federal and non-Federal parties by reservations or restrictions. Identification of the need for reservations or restrictions begins with the agreement to initiate an exchange. Subsequent analysis will determine if the exchange is in the public interest and, if so, confirm what reservations or restrictions are needed. The rule allows alternative methods of protection such as third party participation. Although reservations or restrictions may place burdens on the Federal and non-Federal parties, the effect of reservations or restrictions will be considered by each party prior to a decision to proceed. Section 206 of FLPMA and other authorities provide for the use of reservations or restrictions.

A major utility expressed the thought that the United States could retain title to, or administration of, lands involved in the exchange that are subject to rights-of-way. This is correct; the authority to reserve and retain any rights and interest, including rights-of-way, easements, or grants, when it is in the public interest, is provided in § 2200.0–6(i) of the rule.

It was suggested that any covenants be developed in consultation with appropriate Federal and State agencies, including the State Historic Preservation Office. Covenants and restrictions may be developed to protect any number of public interests, including cultural resources, and consultation with appropriate Federal and State agencies will occur as a matter of course. Therefore, the final rule does not incorporate explicit language on consultation with State Historic Preservation Officers.

Three commenters suggested the United States retain an interest in the stream of mineral royalties when exchanging Federal lands. Reserving mineral interests is preferred to maintaining royalty interests for administrative reasons. Depending on the type of royalty interest reserved, the generation of revenues may be prevented or reduced as a result of mineral development decisions made by the owner of the mineral interests. By contrast, reserving the mineral estate would allow the United States to manage the development of the resources in a way that would protect Federal interests. In addition, there may be no statutory authority for reserving a royalty interest.

(j) *Hazardous substances.* The Community Environmental Response Facilitation Act (106 Stat. 2174)(CERFA) was signed into law on October 19, 1992, one year after the proposed land exchange rules were published in the **Federal Register.** No changes to the final rule have been made as a result of the new legislation. However, the procedural requirements of CERFA will be followed to the extent applicable, and consideration will be given to the need for rulemaking in connection with this new law.

One respondent suggested requiring "hold harmless" agreements when conveying Federal lands affected by hazardous substances to a "potentially responsible party." Hold harmless agreements generally are desirable; however, it is necessary to maintain flexibility in negotiating land exchanges.

One commenter identified a perceived inconsistency in the requirement of notification for private parties and the Federal government. The notice to the non-Federal party requires that "known" storage, release, or disposal of hazardous substances be identified, whereas the private party must notify the government of "known or suspected * * *." The respondent favored the broader application but suggested that in any case they should be consistent. Full disclosure of the potential existence of hazardous substances on the non-Federal lands is necessary to avoid sole future liability by the United States incurred as a result of dissolution, bankruptcy, etc., of the non-Federal party. The non-Federal party will have no such risk because the Federal government will be available for correction or mitigation should future hazardous substance issues arise.

The same respondent pointed out that the proposed regulations would require the Federal officer to determine whether hazardous substances are present on non-Federal lands but do not require him to do so on Federal lands, and recommended that the provisions be made consistent. Paragraph (j)(1) of the final rule has been revised to incorporate this suggestion.

Several commenters proposed that the private parties only be required to provide a broad hold harmless indemnification if the government will reciprocate. This suggestion cannot be adopted. The United States is required not only to clean up any hazardous substances found on the Federal lands prior to conveyance, but also must warrant in the conveyance document to other than a "potentially responsible party," that the United States will be responsible for any further cleanup necessary. Further, obligating Federal government expenditure via indemnification agreements made in advance of necessary appropriations would be a violation of the Anti-Deficiency Act (31 U.S.C. 1341(a)).

A respondent stated that the "hold harmless" requirement may not protect Federal interests from cleanup liability imposed by a third party. The comment is correct. However, the "hold harmless" agreement would provide a mechanism for compensating the United States for cleanup costs and claims after conveyance.

It was suggested that the regulations state that the government is acquiring lands or interests in lands as an "innocent purchaser." This suggestion was not adopted as it is doubtful that such a disclaimer in the rule would establish the United States as an "innocent purchaser" in every case. In many cases, it is recognized that the owner of the property shares in whatever liability may exist.

Two comments indicated the regulations failed to take into account a recent court ruling (*Hercules Incorporated* v. *United States Environmental Protection Agency,* 938 F.2d 276, D.C. Cir. 1991) that the United States is responsible for providing notice of the storage, release or disposal of hazardous substances on Federal lands regardless of ownership at the time the substances came to be on the lands, and suggested the phrase "* * * during time of Federal ownership * * *" be deleted. The phrase has been deleted in the final rule.

Another reviewer mentioned that 42 U.S.C. 9620 requires the conveyance document to contain a notice of known storage, release, or disposal of hazardous substances. These regulations do not supplant the requirements of 42 U.S.C. 9620.

(k) *Legal description of properties.* One commenter said that property description by legal survey is sometimes difficult and suggested that the rule be amended to allow the use of a map as an alternative. This suggestion cannot be adopted. Department of Justice Standards and public land laws pertaining to the transfer of title to Federal lands do not permit the use of a map in lieu of legal description of lands. Maps alone generally would not provide an unambiguous description of lands being considered for exchange; however, maps may be used to supplement legal descriptions.

(l) *Unsurveyed school sections.* An agency respondent suggested that the word "mineral" be inserted between the words "all" and "rights." It is intended that States must waive all rights, including those related to minerals, to unsurveyed school sections used in an exchange. This suggestion was not adopted.

(m) *Coordination with State and local governments.* Two respondents expressed concern that local government plans and land use ordinances be noted and respected in the exchange process. One suggested including a provision requiring a consistency review by the State government. Section 2200.0–6(i) states that the Federal lands conveyed will be subject to local government laws, regulations and zoning, and § 2200.0–6(m) provides for notification 60 days before conveyance. These provisions afford State and local governments the opportunity to conduct whatever reviews they feel are needed, including consideration of land uses and zoning, in commenting on the proposed exchange. Therefore, no additional references to local plans and ordinances have been made in the final rule.

Section 2200.0–7 Scope

One respondent suggested that paragraph (b) of the rule be clarified as to whether certain existing regulations would be superseded or merely amended. Part 2200 of the existing regulation is being revised with portions amended or superseded as indicated.

Two parties commented on paragraph (c), regarding the lack of uniform applicability of the proposed rule in Alaska. One suggested separate regulations for such exchanges, similar to the Small Tracts Act regulations. The other felt the rule should allow the authorized officer to depart from this rule to a degree consistent with ANILCA. The rule provides the authorized officer the latitude allowed by law to pursue land exchanges. No changes have been made in response to this comment.

Three comments were received suggesting clarification of paragraph (d) of the proposed rule. This paragraph provided for the continuation of exchanges agreed to prior to issuance of this final rule under the laws and regulations in existence at the time the initial agreement to exchange was entered. Paragraph (d) of the proposed rule has been revised in the final rule to remove the confusion generated and to state the provisions of the Act more accurately.

It is the intent of the Department to follow the principles established in subsection (g) of section 206 of FLPMA, as amended. Under these principles, the Department intends that the following will apply: (1) Before this rule takes effect, pending exchanges may proceed in accordance with existing statutory law, including the applicable provisions of the Federal Land Exchange Facilitation Act (the Act) as well as the regulations that are being superseded by this rule; and nothing in the Act shall be construed so as to delay or otherwise hinder the processing or consummation of any such exchange; (2) The principles expressed above are subject to the following caveat—if the parties agreed to initiate the exchange before August 20, 1988, the date of enactment of the Act, subsections (d) through (i) of section 206 of FLPMA, as amended, shall not apply to a pending exchange, unless the parties agree otherwise; (3) After this rule takes effect, pending exchanges initiated on or after August 20, 1988, shall proceed in accordance with this rule except where, in the judgment of the authorized officer, it would be more expeditious to continue otherwise, and to do so would not be inconsistent with current statutory law, including the applicable provisions of the Act, or a binding agreement is in effect and completion of the exchange would not be inconsistent with current statutory law.

Section 2201.1 Agreement to Initiate an Exchange

A representative of an environmental group suggested a provision requiring full public input and also specifying that the NEPA process begin as soon as the agreement is executed. The opportunity for public input will occur in accordance with the public notice and comments provisions of section 2201.2 of the rule. These provisions require publication of a notice as soon as the agreement to initiate is entered into, but the NEPA process may be initiated before that event if the authorized officer believes it would be proper. The opportunity for public input will depend upon the level of NEPA analysis and documentation, which, in turn, depends upon the complexity of each exchange proposal.

Another respondent suggested that the agreement to initiate should detail who will be responsible for costs incurred in the event the exchange process is terminated prior to execution of an exchange agreement (or an exchange of titles). Such a requirement would be in direct conflict with §§ 2200.0–6(a), 2201.1(f) and 2201.7–2(c) of the final rule, which provide that there are no obligations or reimbursement requirements in exchanges that are terminated short of a binding exchange agreement. The statutory authority for this rule does not provide for reimbursement of expenses outside of an exchange transaction. Compensation, or reimbursement of the non-Federal party for costs incurred, in the event an exchange is terminated would raise myriad procurement and contracting issues and, in some cases, may not be authorized. This limitation, however, is not intended to preclude payment to anyone with whom the Government has contracted directly for services that in fact have been received.

One respondent asked whether, if an exchange proponent were to propose exchanging non-Federal lands within the boundaries of the National Forest System for public lands under the jurisdiction of the BLM, the proponent would be required to indicate as a part of the proposal document that the offered land is covered by a Forest Service management plan showing the land is essential to the programs of the National Forest System. The proponent would not be required to show that the non-Federal land is essential to the National Forest System. In such an instance, the proposal would be submitted to the BLM authorized officer. In analyzing the proposal, the BLM would consult with the Forest Service to determine whether the public interest would be well served, to assess environmental effects, and to determine if the exchange would be consistent with agency plans.

Another respondent suggested adding language at the end of paragraph (a) of this section requiring the authorized officer and the non-Federal party to meet and discuss proposed exchanges prior to determining whether an agreement to initiate an exchange should be executed. The Department does not believe such a requirement is needed in the rule. Advance meetings and discussions are commonplace and are necessary to reach the point of entering an agreement to initiate.

A commenter suggested language requiring the prospective exchange parties to agree to a preliminary estimate of value prepared by a qualified appraiser if the property to be conveyed out of Federal ownership exceeds $150,000 in value. The preliminary estimate of value is a tool available to the parties to be used to evaluate the feasibility of an exchange proposal. The Department recognizes that preliminary estimates of value may be useful in evaluating exchange proposals but does not see a need to require the use of preliminary estimates in all cases.

A comment suggested that the preliminary estimate reflect the intended use of the lands, thus eliminating potential for substantial profits. In preparing any preliminary estimate, the appraiser takes into consideration all probable uses of the property, including the proposed or intended use. These uses must be legal, economically feasible, physically possible and result in the highest and best use, i.e., most profitable use, of the property. It would be improper to disregard an important element of information that may influence market value; that is, the intended use may not always be the highest and best use of the property.

A number of comments were received on the listed requirements for an agreement to initiate an exchange. One respondent suggested that a form be developed listing the information needs for a Federal land exchange to help determine whether an exchange is feasible. The general types of information to be included in agreements to initiate are listed in the rule. A form would be most appropriately located in a handbook, not in the regulations.

Another respondent was of the opinion that identification of the non-Federal lands should not be mandatory in the agreement to initiate, since the environmental review process could result in changes of included lands. While amendment of the list of lands may occur at any time during the process, identification of all lands that might be included in the final transaction of the exchange is necessary in the agreement to initiate, as that document is the source of the descriptions in the public notice of the proposal. Therefore, this recommendation was not adopted in the final rule.

Several additions to the current list of requirements were suggested. These included: (1) A citation of the exchange authority, (2) a statement regarding the need for segregation of the Federal lands once the exchange is started, and (3) identification of the status that the acquired lands would assume following title acceptance by the United States and termination of the 90-day segregation period. It was also suggested that the appropriate United States officer having jurisdiction over title records for lands and minerals review these items. Such considerations, while essential to completion of an exchange, are generally not elements of an exchange upon which agreement must be reached. Therefore, these suggestions were not included in the final rule.

Two parties suggested revisions to the requirements for identification of the parties involved in the exchange. One respondent suggested a full disclosure of any holding companies, officers, directors, holders of significant blocks of stock, campaign contributions made to holders of Federal office, and any agreements made for subsequent sale or exchange of lands to be acquired from the Federal government. This suggestion was not adopted because such requirements would go far beyond the legal authority to identify the party with whom the agency is exchanging land, their citizenship, or corporate standing.

One industry representative suggested that all known uses be identified in the agreement to initiate, and that right-of-way grants be specifically identified as an authorized use. Section 2201.1(c)(4) of the rule was amended to adopt this recommendation. Identification of uses known to the Federal and non-Federal parties will ensure proper consideration of these uses in the analysis of the exchange proposal.

Another industry respondent pointed out that paragraph (c)(7) requires documentation of any agreed upon compensation of assumed costs normally the responsibility of the other party, but that nowhere in the regulation are these responsibilities laid out. It was suggested that the final rule spell out what costs are normally to be borne by either party. Section 2201.1–3 of the rule gives a partial listing of costs for which compensation may be made, but the assignment of these costs is best made by the authorized officer in accordance with accepted real estate practices in the vicinity of the lands to be exchanged. No changes were made to paragraph (c)(7) in the final rule in response to this comment, but reference to compensating for costs ordinarily borne by the other party under local custom or practice was added to § 2201.1–3.

Another respondent suggested that the requirement of paragraph (c)(11), regarding relocation of tenants on the non-Federal lands, apply on an equal basis to the Federal lands and any occupants. This suggestion was not adopted. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4626) only applies to qualified displaced parties on acquired non-Federal land. Section 2201.8(c)(2) of the rule specifies the measures required to protect authorized occupants of the Federal lands.

Two parties asked that paragraph (d) also be used to establish the sequence and time lines for other required reports and/or clearances. The requirement that the agreement provide a time line is already specified in paragraph (c)(5) and is retained in the final rule. The sequence of preparing or approving required reports is subject to negotiation and agency administrative procedure.

Another respondent recommended deleting the entire second sentence of paragraph (d) relating to estimating value in the absence of current market information. By way of explanation, the respondent said that it is "inconsistent with" and would "eviscerate" the section on appraisals (2201.3 through 2201.3–3). To the contrary, the provisions of this paragraph are consistent with the provision of § 2201.3–2(b). No change in the final rule is needed.

Several comments on paragraph (g) questioned whether any authority exists to deny appeal rights to exchange proponents, or anyone else, when the Federal or non-Federal parties withdraw from an exchange proposal. One of the parties recommended deleting this paragraph. Another felt there should be no appeal opportunity if the non-Federal party withdraws. Only decisions of the authorized officer are appealable through the Interior Board of Land Appeals; the Department has no jurisdiction over decisions of non-Federal parties. In the case of land exchanges, the decision is made and documented through the final Notice of Decision. Section 2201.7–1 of the final rule establishes the provisions for appeal of this decision.

Section 2201.1–1 Assembled Land Exchanges

Most comments on this section centered on the appraisal methods to be employed when processing assembled land exchanges. Several commenters suggested relaxing the safeguards for dealing with certain assembled land exchanges. A detailed explanation of assembled land exchanges is provided below to assist in responding to these comments and in interpreting the rule.

Assembled land exchanges provide the opportunity to package multiple parcels of Federal and/or non-Federal land. There are two types of assembled exchanges provided for in the rule: (1) Single transaction exchanges, and (2) multiple transaction exchanges using a running ledger account to track value differentials for each of the transactions. Single transaction assembled exchanges result in one closing for a collection of parcels. Multiple transaction exchanges involve two or more closings and are intended to facilitate processing of large acreages. Assembled land exchanges are subject to all of the general provisions of this rule in addition to the specific requirements of section 2201.1–1.

Section 2201.1–1 of the rule will require establishing the terms of any assembled land exchange in the agreement to initiate an exchange. For multiple transaction exchanges, the rule will restrict running ledger value differences to no more than 25 percent of the value of the conveyed Federal lands, require balancing values of the Federal and non-Federal lands conveyed with land or money at least every three years, and authorize the authorized officer to require deposits of cash, bonds or other sureties to offset temporary balances owed to the Federal government.

An example of a multiple transaction exchange would be where a State government offers $100,000 worth of land in exchange for an equal value of Federal land. In the agreement to initiate an exchange, it is agreed to use a ledger account and two transactions. The offered and selected lands are identified in the agreement, and all necessary analyses and clearances are conducted. The first transaction results in the conveyance of $50,000 of State land to the United States and the conveyance of $40,000 of Federal land to the State. The difference of $10,000

is noted to the ledger as a credit to the [redacted]. The second transaction involves [redacted]0 of Federal land being transferred to the State and $50,000 of State land being conveyed to the United States. The second transaction erases the $10,000 outstanding balance owed to the State and concludes the exchange.

One respondent felt that it would be useful to allow the Federal or non-Federal party to waive the 25 percent limit. The commenter felt that given that the values are to be balanced at least every two years, the risks of exceeding the 25 percent limit are minimal. The Federal Land Policy and Management Act requires that exchanges be limited to values within 25 percent of the involved public land value. Where ledger accounts are used, the limit will be 25 percent of the sum of the values of the Federal land conveyed in the current transaction and all previous transactions. This limitation provides protection for the Federal government and exchange proponents.

Another respondent noted that "* * * most beneficial exchanges, when a ledger account is established, would easily take longer to complete * * * than the 2-year balancing requirement * * *" This respondent suggested a period longer than two [redacted]s. This suggestion has been adopted, [redacted]o-year balancing requirement has [redacted]extended to three years. However, the Department intends that the duration of the period(s) over which there is an outstanding ledger balance be minimized.

Several States expressed concern that under the proposed regulations, States might be considered single owners of multiple parcels involved in an exchange, resulting in lower appraised values of the State lands when compared with assembled multiple ownership exchanges. Section 2201.3–2 of the rule discusses values of the lands assembled from multiple ownerships by any non-Federal party. This section also provides that Federal and non-Federal lands be appraised in a similar manner.

For paragraph (f), it was suggested that termination of the assembled exchange arrangement be effective after 30 days written notice to the other party. Requirements for advance notice of termination should be addressed in the agreement to initiate an exchange. A critical requirement, however, is that values must be equalized, pursuant to § 2201.6 of this rule, prior to termination. Also, it is intended that multiple transaction exchanges [redacted]erwise be arranged in a manner that [redacted]easonably protect the public [redacted]st throughout each phase of the exchange should the decision be made by either party to terminate the agreement.

Section 2201.1–2 Segregative Effect

This section of the proposed rule provided for the temporary segregation of Federal lands from entry under the public land and mineral laws for up to five years when a proposal is made to exchange Federal lands.

One respondent felt that no further segregation authority should be provided because too much land has been withdrawn in the past. Another felt the statutory authority for the five-year segregation is limited to the "mining laws" not the "public land laws." Regarding the first comment, the commenter is referred to the definition of segregation in § 2200.0–5(v). It states the purpose of segregation is "to allow for the orderly administration of the Federal lands." As to the second comment, the commenter is correct. However, due to the purpose stated above, the rule has been expanded to include segregation from the "public land laws" and the "mineral laws." It is well established that the Secretary of the Interior may exercise his rulemaking authority in order to segregate lands temporarily to allow for the orderly administration of the lands under his care and supervision (see, e.g., *Byron* v. *United States*, 259 F. 371, 377 (9th Cir. 1919); *Hopkins* v. *United States*, 414 F.2d 464, 473 (9th Cir. 1969); *Marion Q. Kaiser*, 65 I.D. 485, 488–89 (1958)). Although a two-year segregation from public land laws has been used in other Department rules, this final rule provides for a five-year segregation from the public land laws to be consistent with the five-year segregation from the mineral laws provided by the Act.

One respondent raised a question regarding the effect on right-of-way authorizations that expire during the segregative period. That respondent felt that the holder of a right-of-way should have the ability to renew during the period of segregation. The segregation is from the mining laws and the public land laws only. The public land laws as defined in § 2200.0–5(s) deal with the disposal in fee of public lands. Normally rights-of-way are not fee interests, and therefore, would not be affected by the segregation. The discretionary renewal of a right-of-way during the period of segregation likewise would not be precluded.

Several comments were received regarding paragraph (d) pertaining to the 90-day segregation of lands acquired by the United States. That provision has been moved to § 2201.9 of the rule.

Section 2201.1–3 Assumption of Costs

Thirty-one comments were received on this section. The major concern of the respondents related to the requirement to meet the criteria to qualify for compensation of costs. They believed this requirement places unwarranted limitations on the exercise of the cost compensation authority. The Act requires the Secretary to determine when it is in the public interest to make adjustments to values compensating the non-Federal party for assuming certain costs. The requirement to meet the criteria is necessary to ensure that compensation for costs assumed is in the public interest and has been retained in the final rule.

A concern was expressed that the cash equalization funds for compensation not be restricted to specific exchanges but be available in a general exchange fund so processing is not affected by budget delays. Funding arrangements will be dealt with outside of the rulemaking process.

Although § 2200.1–3(b) sets criteria for when costs may be compensated, it appeared to one respondent that there are no such restrictions on the adjustment of relative values as a way of providing compensation, other than the 25 percent cap. The Act states that these amounts be reasonable and accurately reflect the value of the cost and service. This wording is incorporated in § 2201.1–3 of the rule as one of the five criteria that must be met before compensation can be made. Each exchange presents unique circumstances so anything beyond general restrictions may lead to impediments to exchange. The five criteria contained in § 2201.1–3(b), along with the 25 percent limitation, offer the authorized officer reasonable parameters for ensuring that Federal assumption of or compensation for costs assumed by other parties is in the public interest.

A suggestion was made to state which costs will be borne by whom within the agreement to initiate an exchange. As previously noted, § 2201.1(c) of the rule provides that an agreement to initiate must assign responsibility for costs and specify whether certain costs will be compensated.

Two comments stressed the need to list the costs associated with the completion of NEPA documentation as not necessarily being costs associated with the Federal government's portion of the exchange. This suggestion was not adopted. Section 2201.1(c)(6) requires an assignment of responsibility for performance of required functions and for costs associated with processing

en exchange in the agreement to initiate. cumentation of environmental alysis is one of those required functions and is typically a responsibility of the Federal agency.

One respondent wanted to confirm that the costs associated with the cultural resources survey, mitigation (including excavation), reports, and coordination with the State Historic Preservation Officer are considered. Section 2201.1–3(a)(2) of the proposed rule states that parties may agree to make adjustments in relative value for a variety of costs, including cultural resource surveys and mitigation. This paragraph has been retained in the final rule.

It was suggested that the term "in the public interest" be defined. Public interest, as used in § 2201.1–3, involves many factors and is best left as a determination based on national and regional concerns as well as Federal, State and local issues and values in the area of the Federal land.

One commenter suggested clarifying § 2201.1–3 as it applies to discussing the assumption of costs with or without compensation in agreements to initiate an exchange under paragraph (a). Paragraph (a) merely states that either party may agree to assume, with or ithout compensation, the costs that uld ordinarily be borne by the other rty. Paragraph (b) establishes the criteria for compensation or assumption of costs by the Federal party. No change was made in the final rule in response to this suggestion.

It was suggested that costs incurred by the non-Federal party as a result of the Federal government being a party to the exchange should be compensated by the government. This respondent further stated that "section (b) attempts to combine compensation to the non-Federal party with compensation for Federal costs and becomes vague." Each exchange is based on its own unique situation. The special requirements of each party, including the United States, must be addressed on a case-by-case basis. It would be inappropriate to require compensation of the non-Federal party as a standard practice. Paragraph (b) of the final rule specifically describes the conditions that must be met and documented: (1) To assume non-Federal costs without compensation, or (2) to compensate the non-Federal party for assuming Federal costs.

Section 2201.2 Notice of Exchange oposal

Several respondents requested that the State government be notified at this stage rather than waiting until the Notice of Decision stage. One of these also requested that the Congressional delegation be included in this notice of exchange proposal. These recommendations have been adopted, but the requirement for notifying State and local governments was retained in the Notice of Decision section of the rule.

An existing right-of-way holder requested that notice be provided to the authorized users concurrent with the publication of the first newspaper notice. Concurrent notice of all authorized users, including right-of-way holders, is implied in § 2201.2(a) of the rule. No change was made in the final rule in response to this comment.

One commenter questioned if the notice would be published in all newspapers in the counties in which the lands to be exchanged are located. Paragraph (a) of this section of the rule requires a notice to be published in a newspaper of general circulation in each of the counties where the Federal and non-Federal lands involved in the exchange proposal are located. That could require publication in one or more newspapers or a single newspaper that covers several counties, as needed to notify the public.

A respondent suggested that minor modifications to the Notice of Exchange, in the case of acreage adjustments to equalize values, should not have to be republished because republication would be counter to the intent to expedite exchanges. Minor corrections of descriptions or acreages, or reduction of published acreages to achieve equal values do not require republication. However, any addition of new lands to achieve equal values will require publication. No change was made in response to this comment.

One respondent suggested that paragraph (a)(4) be revised to clarify that public comments regarding the environmental impacts of the proposed exchange are sought. This respondent also felt paragraph (a) should include a statement describing the present use and proposed use of the lands to be exchanged and asked for clarification of the meaning of "description" of the lands being considered for exchange. Paragraph (a)(4) of this section has been revised in the final rule to make it clear that public comments on exchange proposals are sought and that timely comments will be considered in the environmental analysis of the proposal. A primary purpose of the notice of exchange proposal is to identify those persons with interests in the lands or claims against the involved properties. To facilitate this notification the properties must be described legally. However, the authorized officer may include additional descriptions as appropriate. Information regarding uses of the involved lands is always available at the local agency office.

Two respondents expressed confusion as to when the public is notified. The public is notified of a proposed exchange when the parties enter into an agreement to initiate, and again when a decision is reached. The first notice seeks information and opinion and the second conveys the decision. No changes were made in the final rule in response to these comments.

Two respondents suggested that the notice to authorized users should be by certified mail. The authorized officer may choose to notify authorized users by certified mail or any other means deemed appropriate or necessary. Although certified mail will likely be the most frequently used method of notification, the Department does not feel this should be made a requirement of the rule in order to preserve other options for notification.

A State government official requested that notice be placed in the **Federal Register**. Although **Federal Register** notice would reach groups and other members of the public on a national scale, newspaper publication ordinarily is a more effective way to reach interested and potentially affected persons and groups. The authorized officer, however, has discretion to publish in the **Federal Register** should that official deem it necessary or appropriate to do so.

One respondent expressed confusion as to how the notice of exchange proposal relates to land use planning notices. Unless the proposed exchange requires a plan amendment, this notice of exchange proposal has no relationship to land use planning.

Section 2201.3 Appraisals

A commenter expressed concern with the reference to the Uniform Appraisal Standards for Federal Acquisitions, since it is focused on acquisition under threat of condemnation, and recommended instead that the Standards of Professional Practice promulgated by the American Institute of Real Estate Appraisers (now the Appraisal Institute) be adopted as the accepted standard. The Act directs the agencies to comply with appraisal standards set forth in "Uniform Appraisal Standards for Federal Acquisitions," to the extent practicable. The appraisal standards adopted in this rule are consistent with that direction. However, some aspects of the Appraisal Institute's Standards of Professional

Practice have also been incorporated in the rule.

Section 2201.3–1 Appraiser Qualifications

Several comments were received regarding the proposal to require appraisers to be certified or licensed under State law. Two commenters believed requiring all appraisers to be State certified or licensed was impractical. One of the two suggested that it should be a goal and not a requirement. Two professional appraisal organizations expressed support for the provision. Agency compliance will depend upon the applicability of State laws. Seventeen States, as of January 22, 1993, require all appraisers to be either certified or licensed regardless of the type of real estate transaction. The remaining States require only those appraisers involved in appraising property for federally regulated financial agencies to be certified or licensed. In some States, appraisers not involved in federally related financial transactions may voluntarily become certified or licensed. Therefore, appraisers should comply with State appraisal certification or licensing requirements.

Federal staff appraisers performing appraisal assignments related to their agencies are generally exempt from State certification or licensing requirements. However, it is important that agency appraisers be equally qualified and meet training and experience standards adopted by State regulatory agencies. To eliminate potential problems, we adopted language requiring qualified appraisers to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (103 Stat. 183) (FIRREA). Consequently, the agencies will assist and encourage staff appraisers to become certified or licensed. Where it is unnecessary or impractical to meet State requirements, staff appraisers will possess qualifications consistent with generally accepted regulatory requirements in other States.

One State government agency explained that its staff appraisers were exempt from certification requirements under the State law. The State agency suggested that the rule be revised to indicate clearly that State agency staff appraisers who are exempt from the State requirements be recognized as being qualified to do exchange proposals. This suggestion was partially adopted. Appraisers exempt from State law do not have to be certified or licensed. However, the appraisers must meet standards generally comparable to State training and experience qualifications as established by the BLM and the Forest Service.

Another comment expressed concern that criteria for a qualified appraiser did not address reciprocity; i.e., State agreement to accept certification and licenses issued by other States. The commenter felt that unless the States generally agreed on qualification standards that permitted reciprocity, it would be difficult for agency and contract appraisers to appraise in States other than those in which they are certified or licensed. Inconsistent State standards will hamper the free flow of appraisal services across State boundaries; however, reciprocity is a State issue that cannot be resolved in this rule.

The definition of a qualified appraiser contained in the proposed rule included a provision that the appraiser be approved by the authorized officer. Three commenters suggested this was unfair and that, instead, the parties should agree on selection of the appraiser. It was not intended that the authorized officer would unilaterally select the appraiser; however, the appraiser must be approved by the authorized officer. No change was made in response to these comments.

One commenter interpreted the first sentence in § 2201.3–1(a) of the rule to require the agency to use one appraiser for both the Federal and non-Federal lands in all cases. This respondent suggested the section be changed to allow use of a second appraiser when only one side of an exchange is in dispute. There was no intention to require only one appraiser to appraise both the Federal and non-Federal lands. In response, the final rule refers to "appraisers" to alleviate this potential misunderstanding.

Two professional appraisal organizations suggested that the agencies adopt the Uniform Standards of Professional Appraisal Practice (USPAP) to assure consistency and quality in appraisals. The USPAP includes standards for real estate appraisal, real estate analysis, mass appraisal, personal property, and business appraisal, and are more general since they set standards for the act or process of estimating value. Since the USPAP definition of an appraisal report is different from that generally recognized by Federal agencies, this suggestion was not adopted. The appraisal standards in this rule apply specifically to land exchanges entered into by the BLM and the Forest Service. They reflect standards applicable to exchange transactions and appraisals or appraisal reports as defined in section 2200.0–5 of the rule. The standards are consistent with the USPAP and incorporate Government-wide standards published by the Interagency Land Acquisition Conference and the Department of Transportation.

Section 2201.3–2 Market Value

A mining industry association suggested that § 2201.3–2(a) include a statement that appraisers disregard any increase in value to Federal lands resulting from the non-Federal party's particular need to acquire the land. It was the association's belief that appraisers overvalue Federal lands adjacent to operating mines. This suggestion was not adopted since the appraiser must take into consideration all potential buyers and uses of the property including possible purchase by adjacent property owners. The value estimated should reflect motivational factors evident in similar transactions; e.g., sales of abutting lands.

A commenter suggested inserting "* * *" in the same general location as the subject property;" at the end of § 2201.3–2(a)(3). However, this limitation would severely limit the appraiser's analysis of properties possessing unique historic, wildlife, recreation, wilderness, scenic or other resource values; therefore, the suggestion was not adopted.

Several comments were received asking that the list of resource values in § 2201.3–2(a)(3) be expanded to include watershed and archeological values. However, the listing of resource values to be considered by the appraiser is not all inclusive. This paragraph of the rule includes a reference to "other resource values or amenities" which adequately covers these and other resources that may have value in the private competitive market, including watershed and archaeological values.

A commenter suggested that § 2201.3–2(a)(4) be revised to require the appraiser to consider water rights along with timber and mineral interests. The commenter noted that water rights may be transferred in an exchange, but, depending on the State, may not be considered to be an "interest in the land." Water rights were added in the final rule to the list of contributory interests that may be considered.

Several comments were received regarding what appear to be conflicting instructions contained in § 2201.3–2(a)(5) and (6). If stipulated in the agreement to initiate, lands assembled from multiple ownerships can be appraised separately. Sections (a)(5) and (6) of this section of the proposed rule

were combined in the final rule to clarify the procedure.

Several States suggested that appraisals of individual tracts required in § 2201.3–2(a)(5) of the rule not be limited to individuals buying lands for purposes of an exchange. The States suggested that the concept be extended to State agencies conveying multiple tracts. This provision is limited to those parties who acquire lands for eventual conveyance to the United States through exchange under the terms of an agreement to initiate. A State agency, or any other party, may qualify for such treatment if it meets the test of acquiring tracts from multiple ownerships for purposes of an exchange.

Several persons commented on § 2201.3–2(a)(7) of the proposed rule that would have required the appraiser to disregard any change in market value caused by the intent of the agency to acquire the non-Federal property. One recommended "similar protection" for the non-Federal party. Another suggested adding an exclusion for property where the intended use is the highest and best use. Another stated that this section "clearly violates" the provision of the Act that requires that the same nationally approved appraisal standards be used in appraising both the Federal and non-Federal lands. This respondent added that the paragraph should be deleted or the non-Federal parties should be afforded the same protection. In response to the various comments, this provision has been deleted from the final rule.

One commenter thought that standardized appraisal methods may not be applicable to exchanges in Alaska, as there are very few sales, lands are often unsurveyed, and very little information is available regarding resource values, particularly mineral values. The commenter suggested that the authorized officer be permitted to instruct the appraiser to use the best procedure available to provide a reasonable estimate of value. This suggestion was already provided for in proposed paragraph (b) of the rule, which would allow the authorized officer to use other acceptable methods to estimate values when market information is not readily available. This provision is retained in the final rule.

One commenter suggested the "departure" provisions of USPAP be followed. The commenter stated that this would require an appraiser to indicate the basis for using only the market approach to value (as opposed to all three approaches—market, cost, and income) as required under USPAP in the appraisal report of the property. This suggestion was not adopted. The USPAP is one of several sources used to develop the appraisal standards. There is no intent to depart from these standards nor to require use of all three approaches to value, when it usually is not applicable or necessary.

Section 2201.3–3 Appraisal Report Standards

Three commenters expressed concern that language contained in § 2201.3–3(e) of the proposed rule was vague and could subject appraisers to open ended liability regarding disclosure of potentially hazardous environmental conditions. This provision has been modified to incorporate the comments. The rewritten provision will require the appraiser to disclose in the appraisal report any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised.

One commenter expressed concern over the lack of sufficient safeguards to protect against potential "windfalls." This respondent suggested that two independent appraisals be required on exchanges when land values exceed $300,000. Such a requirement is unnecessary, as dollar thresholds are not a reliable indication that an appraisal assignment is complex and, therefore, requires another independent valuation. Further, such a regulatory requirement would increase processing costs and could delay the land exchange. The decision to require more than one appraisal should be left to the parties involved in the exchange.

One commenter observed that parties to the exchange would be required to invest considerable time and expense in conducting studies, appraisals and title clearances before an informed decision could be made to pursue the exchange. Since values can change over a period of time, it was suggested that once the parties agree on value, those values be binding for a period of not to exceed two years. We believe the provisions of § 2201.7–2(a)(3) regarding the signing of an exchange agreement fixing the agreed upon values upon such terms as the parties concur in provide sufficient protection for the exchange parties.

Another commenter suggested that § 2201.3–3(j)(2), requiring all appraisers to certify that they personally examined all comparable sales, may be unrealistic. This reviewer felt that since comparable properties may be located in many different areas of a State or other regions of the country, this provision may be unnecessarily costly and lead to inordinate delays. An appraiser cannot perform an accurate comparative analysis without a personal examination of the comparable sales. Therefore, this suggestion was not adopted.

Section 2201.3–4 Appraisal Review

There were few comments regarding appraisal review. However, one appraisal organization concurred with the outlined review process and suggested requiring additional education and experience for an appraiser to be considered a qualified review appraiser. Although this may be desirable, the standards set forth in § 2201.3–1(b) are adequate in that they require the appraiser to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of FIRREA.

Other comments suggested that the review appraiser be an agency employee and that the reviewer be appointed by the authorized officer. Section 2201.3–1(a) will allow reviewers to be employees or contractors to the Federal or non-Federal exchange parties. However, as a matter of policy, the Federal agencies will use qualified appraisers as review appraisers. Review appraisers are appointed through authority delegated by the Secretary.

Section 2201.4 Bargaining; Arbitration

Sixteen comments were received regarding: (1) Appointment of the arbitrator by the Secretary, (2) allowing the arbitration decision to be binding for a period not to exceed two years, (3) allowing the agency 180 days for review of the appraisal, and (4) limiting arbitration to issues regarding value of the property. No change was made to the rule in response to these comments as these requirements are specific provisions of Section 3 of the Act.

One commenter expressed concern over who would pay the costs of arbitration. Issues regarding arbitration may be addressed in the agreement to initiate. Further, the Act provides that arbitration be conducted under the rules of the American Arbitration Association, which provide for the assignment of costs.

Section 2201.5 Exchanges at Approximately Equal Value

One commenter felt the $150,000 limit was too high, and recommended establishing a level consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This suggestion was not adopted. The $150,000 limit was established by the Federal Land Exchange Facilitation Act.

Section 2201.6 Value Equalization; Cash Equalization Waiver

One respondent stated that the rule failed to provide safeguards against windfalls, asserting that proponents acquiring property under the guise of an equalization payment are actually purchasing that land with no competition. Section 206(b) of FLPMA protects against such windfalls by limiting cash payment to 25 percent of the value of the involved Federal lands.

One respondent stated that the BLM should have the same prohibition on waiving payments as the Forest Service. Another felt that the Forest Service should revise its rule on cash waivers to be in line with the BLM. The Act's prohibition on waiver of cash equalization applies only to the Secretary of Agriculture. In cases where values of the Federal and non-Federal lands are close, the waiver of cash equalization may allow consummation of exchanges critical to the objectives of Federal land management. Therefore, the Department of the Interior intends to retain the option of waiving cash equalization.

It was suggested that the 25 percent limitation not be applied in Alaska and that ANILCA guidance be used instead. This is already accommodated in § 2200.0–7(c), which specifies that the rule apply to exchanges made under authority of the Alaska Native Claims Settlement Act (ANCSA)(43 U.S.C. 1601–1628) or ANILCA, except to the extent that the rules conflict with the provisions of those acts.

Two respondents expressed concern about the 25 percent limitation imposed by the regulations. One felt that this limitation is not in compliance with FLPMA and the Act, and that while section 206(b) of FLPMA limits equalization to 25 percent of the value of the Federal lands, the Act provides that any adjustment can be made to the relative value of the lands for assumption of costs. The respondent asserted that, therefore, these limitations are independent. The other felt the agency is limiting its ability to complete exchanges with this provision. That portion of the Act dealing with adjustments to relative value is an amendment of Section 206 of FLPMA. The compensation of costs is made in lieu of cash equalization payment and, therefore, is subject to the 25 percent limitation found in Section 206(b) of FLPMA.

Section 2201.7–1 Approval of Exchange; Notice of Decision

One state agency felt that notification to parties will occur too late, as all appraisals and reviews will have been completed. The notice under this section of the rule advises interested and concerned individuals and organizations that the proposed exchange has been approved. The earlier notice of exchange proposals sent to State and local governments, and others, under § 2201.2 of the rule, is intended to provide all who are interested an opportunity to comment on the proposed exchange before appraisal(s) and environmental analysis.

One respondent requested a specific citation for information on appeals. The general reference to part 4 of Title 43 includes all applicable subparts.

In response to a reviewer who asked when the appeal period would begin, paragraphs (b) and (c) of the proposed rule were amended to make it clear that the proposed decision to approve or disapprove an exchange is subject to protest for a period of 45 days after the date of publication of the notice of availability of the decision, and the right to appeal from a protest decision may be pursued in accordance with the procedures of 43 CFR part 4.

Some respondents addressed the duplicative publication of information required by the two exchange notices and the increased workload associated with this requirement. While there are two publication requirements, each serves a different purpose. The first is essential to apprise the public of the agency's intent to initiate a land exchange and to obtain public comment. This notification provides an opportunity for the collection and submission of data that can be used in the analysis of the proposal. The second notice published at the time the final decision is issued advises the public of the outcome and affords the opportunity to protest and appeal.

Two respondents expressed concern that, because of the notice and appeal procedures, appraisals may become outdated before the completion of an exchange. When there is concern that consummation of a land exchange may be delayed beyond the life of the appraisal(s), the parties to the exchange have the option of entering a binding land exchange agreement, upon approval of the exchange, which may lock in the appraised values or provide a procedure for a reappraisal and adjustment of values or an election to terminate.

Section 2201.7–2 Exchange Agreement

One respondent suggested that appraisals could be reviewed and approved in advance of an exchange agreement. No change is needed. The necessary appraisals will be reviewed and approved in advance of entering an exchange agreement provided under this section of the rule.

Section 2201.8 Title Standards

One respondent suggested expanding the discussion of the various types of conveyance documents and their associated degrees of warranty. Since this rule does not change significantly established methods of conveyance, the suggestion was not adopted. Detailed descriptions of the various forms of conveyance are addressed in other sources, such as the Department of Justice Standards.

One respondent suggested that paragraph 2201.8(c)(1) be revised to state that title would be accepted by both parties as set forth in the agreement to initiate. While the parties to an exchange are free to include general terms concerning title closing matters in the agreement to initiate, there is no requirement for addressing terms of title closing in this agreement and the agreement to initiate is not binding. The regulatory requirements for title closing are presented in § 2201.9 of this rule.

Another remarked that the authorized officer should be given discretionary authority to acquire lands with reservations or outstanding rights that could be construed to interfere with Federal use or management of the land. This suggestion was not adopted. Property acquired by the United States cannot contain reservations or interests that are inconsistent with the purpose for which the lands are being acquired.

A spokesperson for an environmental group said that paragraph (c)(1)(iii) should require the government to seek the costs of removing personal property from the lands to be acquired if the non-Federal party fails to do so. This does not need to be explicitly stated in the text of the rule. This section of the rule provides sufficient authority to the authorized officer to condition acceptance of title upon removal of any personal property.

Several commenters felt the proposed rule did not provide sufficient protection for the continuation of currently existing third party uses of Federal land following an exchange of title. As previously noted, § 2201.1(c)(4) was revised to address authorized uses in the agreement to initiate. Further, agency policy requires recognition and protection of third party uses to an extent consistent with the use authorization.

A respondent recommended that the non-Federal exchange party be required to offer a perpetual easement to replace Federal authorizations. The land exchange party and the third party user

may agree to an easement. Presumably, authorizations with terms similar to the original authorizations, as opposed to perpetual easements, will generally be the practice. Both are within the purview of the rule.

Three comments offered by the ski industry stated that lands occupied by a permitted ski area should not be exchanged without the specific consent of the permittee. Holders of ski area permits are due the same degree of protection of rights under the terms of the permit as other types of special use authorization holders.

A suggestion was received from one respondent that when a non-Federal exchange party offers to provide for the continued use of the Federal lands, under substantially the same conditions after the exchange, objections raised by the third party user should not be permitted to prevent the completion of, or cause modifications to, a proposed exchange. The failure of an authorized user to agree to terms offered by the non-Federal party, when their rights are protected, generally would not jeopardize the consummation of the exchange. However, the Department believes that third party users adversely affected by the decision should have the right to protest and appeal.

An industry respondent requested that the regulation clarify that: (1) A mineral lease holder would not be required to negotiate with a non-Federal exchange party, (2) the holder of a Federal mineral lease could reject any proposed agreement from the non-Federal exchange party related to uses authorized by the lease, (3) the proposed regulations would have no effect on existing lease terms and conditions, and (4) BLM could not terminate or interfere with the exercise of valid lease rights, unless otherwise specifically provided for in the Federal lease. The rule provides that holders of mineral leases, and other forms of land use authorizations, may reach agreement for disposition of current uses. The holders of Federal use authorizations are in no way required to reach agreement. Unless specifically provided for in the terms of the use authorization, there will be no terminations due to transfer of title to the Federal lands. Other alternatives, such as the issuance of patent subject to existing authorizations, will be used to protect the rights of third party interests.

Another comment from the business sector was that the regulations should permit only those reservations to be placed on the Federal land that were specified in the agreement to initiate. The agreement to initiate is the point to recognize known title issues. However, after an agreement to initiate is entered, additional rights and reservations may be identified and, therefore, should be recognized. The agreement to initiate is a nonbinding agreement. It is not intended to be all inclusive or definitive in all respects.

A commenter suggested that proof of an agreement between the third party user and non-Federal exchange party should not be required at the time the exchange is approved, but should be required upon entering into an exchange agreement. The Department disagrees. The decision to proceed with an exchange cannot be made without considering the effects of the proposal on authorized uses of the involved Federal lands.

Section 2201.9 Case Closing

Much of this section was rewritten in response to comments to clarify the patent issuance process for land exchanges as affected by the Act. A key provision of the Act is the simultaneous issuance of title transfer documents as the standard closing practice. Prior to the Act, Federal title was often conveyed by a procedure that in effect precluded simultaneous title transfers.

One respondent felt that "Case closing" was an inappropriate title and suggested "Acceptance of Title" instead. This section of the rule deals with automatic segregation and notice to public officials in addition to title transfers. Therefore, the more general title of "Case closing" has been retained.

It was suggested that paragraph (a) refer to patents or "other documents of conveyance." Paragraph (a) has been changed to refer to "documents of conveyance."

It was pointed out that acceptance of title needs to be precisely defined in order to determine when the 90-day segregation period begins. Section 2201.9 has been revised to clarify that, unless otherwise agreed, acceptance of title occurs upon recordation of the documents of conveyance in the local land records and that the segregation period terminates at midnight of the 90th day thereafter. Title insurance policies and final binders, or other title evidence (e.g., opinions, certifications), should set forth the date and time of recordation.

A commenter suggested specifying that the date of acceptance be noted on the land records. This suggestion has been adopted. This section of the rule has been revised to clarify that, unless otherwise agreed, title acceptance by the United States occurs upon recordation in the city, county or other local land records. Notation on the official BLM land status records of the date and time of acceptance is determined by that event.

Concern was expressed that in § 2201.9(a) the word "only" reverses the meaning and intent of section 3(a) of the Act regarding the simultaneous issuance of patents or titles and should be deleted. In response to this and other comments, this section has been rewritten in the final rule.

In *United States* v. *Schurz*, 102 U.S. 378 (1880), the United States Supreme Court ruled that delivery of a patent is not required to effect a transfer of the title of the United States to the public lands under its ownership. The concept of a simultaneous transfer of title, ordinarily requiring a simultaneous delivery of title documents, is found in section 3(a) of the Act. It does not comport with the ruling in *Schurz*. For this reason, § 2201.9(a) of the final rule states, in effect, that in simultaneous transfer cases the decision of *Schurz*, to the extent that it might otherwise be applicable, is not to be followed.

It was suggested that § 2201.9(b) concerning automatic segregation include the regulatory citation for the initiation of withdrawals. A citation to the FLPMA withdrawal regulations has been added. However, if Congress enacts other withdrawal authority in special cases, that authority could also be exercised.

Two agency respondents expressed concern that if the lands acquired are to be withdrawn, a 90-day segregation would be insufficient to complete a withdrawal. Although 90 days may not provide enough time to complete a withdrawal, further segregation may be possible upon withdrawal application under 43 CFR part 2300. The rule has been revised to make it clear that unless a withdrawal is initiated within the 90-day period, segregation will expire.

An environmental group pointed out that exchanges are final only after the administrative appeal process has been completed. This comment was received before 43 CFR 4.21 appeal regulations were amended to delete provisions for automatic stays pending the resolution of appeals. Appeal procedures for this rulemaking are governed by 43 CFR part 4.

A State government respondent suggested that a time constraint be placed on the Solicitor's review. This suggestion has not been implemented. Legal review of complicated title issues can be time consuming, but it is an essential step in any land exchange.

Subpart 2202 Exchanges—National Forest Exchange

One commenter recommended a wording change by deleting "the public

land laws and" from the ninth line. The reference to the public land laws must remain in order to allow the exchange proposal to be protected from other land conveyance options. Should the other conveyances have merit, the exchange should be terminated and the lands open for other filings. This process protects the investment that both parties have in processing the transaction. Therefore, no change was made in the final rule.

Subpart 2203 Exchanges Involving Fee Federal Coal Deposits

It was suggested that there be special requirements for submissions to the Attorney General where coal is involved and that the State should be formally involved earlier in the process. Section 2201.2 of the final rule has been revised to provide "authorized users, jurisdictional State and local governments and the Congressional delegation" with a copy of the Notice of Exchange Proposal. The rule still provides notification 60 days prior to title transfer (2200.0–5 (m)) to State and local jurisdictions.

The principal authors of this final rule are David Cavanaugh, Roger Taylor, Don Simpson, and Mark Stiles of the BLM Washington Office (WO), James Dear of the Forest Service Headquarters Office, and Mike Pool of the BLM New Mexico State Office. This rule was also prepared in cooperation with Paul Tittman, and Phil Bayles of the Forest Service.

It has been determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment of the impacts of the rule was conducted and a determination made that no detailed statement was required pursuant to Section 102(2)(C) of NEPA.

This rule has been reviewed under Executive Order 12866.

The Department has further determined that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). Although small entities will benefit from the expedited exchange of lands, the effects will generally be minor. Also, implementation of the rule primarily will affect the parties voluntarily involved in an exchange.

This final rule has been considered in light of E.O. 12630 concerning possible impacts on private property rights. E.O. 12630 exempts from takings implications assessments, activities that are consensual in nature between the United States and non-Federal parties. Exchanges are consensual and, therefore, do not raise taking issues. Accordingly, no further consideration of takings implications was deemed necessary in this rule.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056.

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians—lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawals, Seashores.

43 CFR Part 2200

Administrative practices and procedures, National forests, Public lands-classification.

For the reasons set forth in the preamble and under the authority of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716 and 1740), parts 2090 and 2200 of groups 2000 and 2200, subchapter B, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

Dated: October 27, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 is revised to read as follows:

Authority: 16 U.S.C. 3124; 25 U.S.C. 334; 30 U.S.C. 189; 43 U.S.C. 322, 641, 869 *et seq.*, 1201, 1624, 1714, 1740; 48 U.S.C. 462 note; 72 Stat. 339–340, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–3 [Amended]

2. Section 2091.0–3 is amended by revising the citation "Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)" to read "Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*)."

§ 2091.2–1 [Amended]

3. Section 2091.2–1 is amended by removing the semicolon and the word "and" at the end of paragraph (b) and adding a period, and removing paragraph (c).

4. Section 2091.2–2 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 2091.2–2 Opening.

* * * * *

(b) Mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, shall remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

5. The heading of § 2091.3 is revised to read as follows:

§ 2091.3 Segregation and opening resulting from a proposal or application.

6. Section 2091.3–1 is amended by removing paragraph (b), redesignating paragraph (a) as paragraph (b), and adding a new paragraph (a) to read as follows:

§ 2091.3–1 Segregation.

(a) If a proposal is made to exchange public lands administered by the Bureau of Land Management or lands reserved from the public domain for National Forest System purposes, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See 43 CFR 2201.1–2 and 36 CFR 254.6).

* * * * *

7. Section 2091.3–2 is revised to read as follows:

§ 2091.3–2 Opening.

(a) If a proposal or an application described in § 2091.3–1 of this part is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1 of this part, the segregative effect of the proposal or application automatically terminates upon the occurrence of either of the following events, whichever occurs first:

(1) Issuance of a patent or other document of conveyance to the affected lands; or

(2) The expiration of the applicable segregation period set out in § 2091.3–1 of this part.

(b) If the proposal or application described in § 2091.3–1 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands shall be opened promptly by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Upon conveyance of public lands under section 206 of the Federal Land

Policy and Management Act, mineral interests reserved by the United States shall not be open to the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(d) Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title. (See 43 CFR 2201.9(b))

PART 2200—EXCHANGES—GENERAL PROCEDURES

8. The authority citation for part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1716, 1740.

9. Subpart 2200 is revised to read as follows:

Subpart 2200—Exchanges—General

Sec.

2200.0–2 Objective.
2200.0–4 Responsibilities.
2200.0–5 Definitions.
2200.0–6 Policy.
2200.0–7 Scope.
2200.0–9 Information Collection.

Subpart 2200—Exchanges—General

§ 2200.0–2 Objective.

The objective is to encourage and expedite the exchange of Federal lands for non-Federal lands, found to be in the public interest, in accordance with applicable statutory policies, standards and requirements.

§ 2200.0–4 Responsibilities.

The Director of the Bureau of Land Management has the responsibility of carrying out the functions of the Secretary of the Interior under these regulations.

§ 2200.0–5 Definitions.

As used in this part:

(a) *Adjustment to relative values* means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

(b) *Agreement to initiate* means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by the written consent of the parties or terminated at any time upon written notice by any party.

(c) *Appraisal or Appraisal report* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

(d) *Approximately equal value* determination means a decision that the lands involved in an exchange have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

(e) *Arbitration* means a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

(f) *Assembled land exchange* means the consolidation of multiple parcels of Federal and/or non-Federal lands for purposes of one or more exchange transactions over a period of time.

(g) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority and responsibility to make decisions and perform the duties described in this part.

(h) *Bargaining* means a process, other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

(i) *Federal lands* means any lands or interests in lands, such as mineral or timber interests, that are owned by the United States and administered by the Secretary of the Interior through the Director of the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(j) *Hazardous substances* means those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

(k) *Highest and best use* means the most probable legal use of a property, based on market evidence as of the date of valuation, expressed in an appraiser's supported opinion.

(l) *Lands* means any land and/or interests in land.

(m) *Ledger account* means an accounting mechanism that tracks the differential in dollar value of lands conveyed throughout a series of transactions. A ledger reports each transaction by date, value of Federal land, value of non-Federal land, the difference between these values upon completion of each transaction, and a cumulative balance and differential.

(n) *Market value* means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(o) *Mineral laws* means the mining laws, mineral leasing laws, and the Geothermal Steam Act, but not the Materials Sales Act, administered by the Secretary of the Interior through the Bureau of Land Management.

(p) *Outstanding interests* means rights or interests in property held by an entity other than a party to an exchange.

(q) *Party* means the United States or any person, State or local government who enters into an agreement to initiate an exchange.

(r) *Person* means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated.

(s) *Public land laws* means that body of general land laws administered by the Secretary of the Interior through the Bureau of Land Management, excepting, however, the mineral laws.

(t) *Reserved interest* means an interest in real property retained by a party from a conveyance of the title to that property.

(u) *Resource values* means any of the various commodity values (e.g., timber or minerals) or non-commodity values (e.g., wildlife habitat or scenic vistas), indigenous to particular land areas, surface and subsurface.

(v) *Secretary* means the Secretary of the Interior or the individual to whom the authority and responsibilities of that official, as to matters considered in this part, have been delegated.

(w) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

(x) *Statement of value* means a written report prepared by a qualified

appraiser that states the appraiser's conclusion(s) of value.

2201.0–6 Policy.

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal or an agreement to initiate an exchange at any time during the exchange process, without any obligation to reimburse, or incur any liability to, any party, person or other entity.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. In making this determination, the authorized officer must find that:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 2201.5 of this part, lands or interests to be exchanged shall be of equal value or equalized in accordance with the methods set forth in § 2201.6 of this part. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), or through arbitration.

(d) *Same-State exchanges.* The Federal and non-Federal lands involved in an exchange authorized pursuant to the Federal Land Policy and Management Act of 1976, as amended, shall be located within the same State.

(e) *O and C land exchanges.* Non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands are required to be located within any one of the 18 counties in which the original grants were made, and, upon acquisition by the United States, automatically shall assume the same status as the lands for which they were exchanged.

(f) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by an exchange that are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress; the California Desert Conservation Area; or any national conservation or national recreation area established by Act of Congress, immediately are reserved for and become part of the unit or area within which they are located, without further action by the Secretary, and thereafter shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(g) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are in conformance with land use plans or plan amendments, where applicable. Lands acquired by an exchange within a Bureau of Land Management district shall automatically become public lands as defined in 43 U.S.C. 1702 and shall become part of that district. The acquired lands shall be managed in accordance with existing regulations and provisions of applicable land use plans and plan amendments. Lands acquired by an exchange that are located within the boundaries of areas of critical environmental concern or any other area having an administrative designation established through the land use planning process shall automatically become part of the unit or area within which they are located, without further action by the Bureau of Land Management, and shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(h) *Environmental analysis.* After an agreement to initiate an exchange is signed, an environmental analysis shall be conducted by the authorized officer in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the environmental policies and procedures of the Department of the Interior and the Bureau of Land Management. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to § 2201.2 of this part.

(i) *Reservations or restrictions in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(j) *Hazardous substances*— (1) *Federal lands.* The authorized officer shall determine whether hazardous substances may be present on the Federal lands involved in an exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands to the other parties in accordance with the provisions of 40 CFR part 373. The authorized officer shall provide this notice in the exchange agreement. The authorized officer shall also provide such notice, to the extent information is readily available, in the agreement to initiate an exchange. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a), the conveyance document from the United States shall contain a covenant in accordance with 42 U.S.C. 9620(h)(3). Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement, as referenced in 42 U.S.C. 9607(e), whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any known, suspected and/or reasonably ascertainable storage, release, or disposal of hazardous substances on the non-Federal land

pursuant to § 2201.1 of this part. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless" agreement shall be included in an exchange agreement, pursuant to § 2201.7–2 of this part.

(k) *Legal description of properties.* All lands subject to an exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if those laws and standards cannot be applied, the lands shall be properly described and clearly locatable by other means as may be prescribed or allowed by law.

(l) *Unsurveyed school sections.* For purposes of exchange only, unsurveyed school sections, which would become State lands upon survey by the Secretary, are considered as "non-Federal" lands and may be used by the State in an exchange with the United States. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived, in writing, all rights to unsurveyed sections used in the exchange.

(m) *Coordination with State and local governments.* At least 60 days prior to the conveyance of and upon issuance of the deed or patent for Federal lands, the authorized officer will notify the Governor of the State within which the Federal lands covered by the notice are located and the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the geographical area within which the Federal lands are located.

(n) *Fee coal exchanges.* As part of the consideration of whether public interest would be served by the acquisition of fee coal through exchange, the provisions of subpart 3461 of this title shall be applied and shall be evaluated as a factor and basis for the exchange.

§ 2200.0–7 Scope.

(a) These rules set forth the procedures for conducting exchanges of Federal lands. The procedures in these rules are supplemented by the Bureau of Land Management Manuals and Handbooks 2200 and 9310. The contents of these supplemental materials are not considered to be a part of these rules.

(b) These rules apply to all exchanges involving Federal lands, as defined herein, except to the extent they are inconsistent with the authorities listed in parts 2210, 2240, 2250, and 2270 of this title. These rules also apply to the exchange of interests in either Federal or non-Federal lands, including, but not limited to, minerals, water rights, and timber.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions that do not conflict with the provisions of these Acts.

(d) Pending exchanges initiated prior to December 17, 1993 shall proceed in accordance with this rule unless:

(1) In the judgment of the authorized officer, it would be more expeditious to continue following the procedures in effect prior to December 17, 1993; or

(2) A binding agreement to exchange was in effect prior to December 17, 1993; and

(3) To proceed as provided in paragraphs (d) (1) or (2) of this section would not be inconsistent with applicable law.

(e) Exchanges proposed by persons holding fee title to coal deposits that qualify for exchanges under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in subpart 3436 of this title shall be processed in accordance with this part, except as otherwise provided in subpart 3436 of this title.

§ 2200.0–9 Information collection.

(a) The collection of information contained in part 2200 of Group 2200 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056. The information will be used to initiate and complete land exchanges with the Bureau of Land Management. Responses are required to obtain benefits in accordance with the Federal Land Policy and Management Act of 1976, as amended.

(b) Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (870), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; and the Paperwork Reduction Project (1004–0056), Office of Management and Budget, Washington, DC 20503.

10. Subpart 2201 is revised to read as follows:

Subpart 2201—Exchanges—Specific Requirements

Sec.

2201.1 Agreement to initiate an exchange.
2201.1–1 Assembled land exchanges.
2201.1–2 Segregative effect.
2201.1–3 Assumption of costs.
2201.2 Notice of exchange proposal.
2201.3 Appraisals.
2201.3–1 Appraiser qualifications.
2201.3–2 Market value.
2201.3–3 Appraisal report standards.
2201.3–4 Appraisal review.
2201.4 Bargaining; arbitration.
2201.5 Exchanges at approximately equal value.
2201.6 Value equalization; cash equalization waiver.
2201.7 Approval of exchanges.
2201.7–1 Notice of decision.
2201.7–2 Exchange agreement.
2201.8 Title standards.
2201.9 Case closing.

Subpart 2201—Exchange—Specific Requirements

§ 2201.1 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Bureau of Land Management or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands involved in an exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. The preliminary estimate is generally not an appraisal but shall be prepared by a qualified appraiser.

(c) If the authorized officer agrees to proceed with an exchange proposal, a nonbinding agreement to initiate an exchange shall be executed by all prospective parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by each party, other than the United States and State and local governments, certifying that the party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, adverse claims, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 2201.1–3 of this part;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands, and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to § 2201.7–2 of this part;

(9) A grant of permission by each party to conduct a physical examination of the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 2201.1–1 of this part;

(11) A statement as to any arrangements for relocation of any tenants occupying non-Federal land, pursuant to § 2201.8 (c)(1)(iv) of this part;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 2201.8 (c)(1)(iv) of this part; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals, which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate an exchange may be amended by written consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is delayed or is not consummated or to anyone assisting in any way, or doing business with, any such party.

(g) The withdrawal from, and termination of, an exchange proposal, or an agreement to initiate an exchange, by the authorized officer at any time prior to the notice of decision, pursuant to § 2201.7–1 of this part, is not protestable or appealable under 43 CFR part 4.

§ 2201.1–1 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple parcels of Federal and/or non-Federal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time.

(c) An assembled land exchange arrangement shall be documented in the agreement to initiate an exchange, pursuant to § 2201.1 of this part.

(d) Values of the Federal and non-Federal lands involved in an assembled exchange arrangement shall be estimated pursuant to § 2201.3 of this part.

(e) If more than one transaction is necessary to complete the exchange package, the parties shall establish a ledger account under which the Federal and non-Federal lands can be exchanged. When a ledger account is used, the authorized officer shall:

(1) Assure that the value difference between the Federal and non-Federal lands does not exceed 25 percent of the total value of the Federal lands conveyed in the assembled land exchange up to and including the current transaction;

(2) Assure that the values of the Federal and non-Federal lands conveyed are balanced with land and/or money at least every 3 years pursuant to § 2201.6 of this part; and

(3) If necessary, require from the non-Federal party a deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(4) Assembled land exchanges are subject to the value equalization and cash equalization waiver provisions of § 2201.6 of this part. Cash equalization waiver shall only be used in conjunction with the final transaction of the assembled land exchange and the termination of any ledger account used.

(f) The assembled exchange arrangement may be terminated unilaterally at any time upon written notice by any party or upon depletion of the Federal or non-Federal lands assembled. Prior to termination, values shall be equalized pursuant to § 2201.6 of this part.

§ 2201.1–2 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation by noting the public land status records.

(c) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, such order to be promptly issued and published by the appropriate State Office of the Bureau of Land Management in the **Federal Register**, if a decision is made not to proceed with the exchange or upon removal of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

(d) Upon conveyance of public lands under section 206 of the Federal Land Policy and Management Act, mineral interests reserved by the United States, together with the right to prospect for, mine and remove the minerals, shall be removed from the operation of the mining laws pending issuance of such regulations as the Secretary may prescribe.

§ 2201.1–3 Assumption of costs.

(a) Generally, parties to an exchange will bear their own costs of the exchange. However, if the authorized

officer finds it is in the public interest, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) The parties may agree to make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration including all fees, bargaining, cure of deficiencies preventing highest and best use of the land, conduct of public hearings, assemblage of non-Federal parcels from multiple ownerships, expenses of complying with laws, regulations, and policies applicable to exchange transactions, and expenses that are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) The authorized officer may agree to assume without compensation costs ordinarily borne under local custom or practice by the non-Federal party or to compensate the non-Federal party for costs ordinarily borne under local custom or practice by the United States but incurred by the non-Federal party, but only when it is clearly in the public interest and the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of the cost assumed or compensation is reasonable and accurately reflects the value of the goods and services received;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensating the non-Federal party; and

(5) There are no other practicable means available to the authorized officer of meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of adjustment agreed to as compensation for costs incurred pursuant to this section shall not exceed the limitations set forth in § 2201.6 of this part.

§ 2201.2 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for 4 consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, jurisdictional State and local governments, and the congressional delegation, and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the authorized officer as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments shall be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish descriptions of any lands excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 2201.3 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards set forth in §§ 2201.3–1 through 2201.3–4 of this part and, to the extent appropriate, with the Department of Justice "Uniform Appraisal Standards for Federal Land Acquisitions" when appraising the values of the Federal and non-Federal lands involved in an exchange.

§ 2201.3–1 Appraiser qualifications.

(a) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual, approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(b) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State does not have approved policies, practices and procedures regulating the activities of appraisers, the Bureau of Land Management may establish appraisal qualification standards commensurate with those adopted by other States meeting the requirements of FIRREA.

§ 2201.3–2 Market value.

(a) In estimating market value, the appraiser shall:

(1) Determine the highest and best use of the property to be appraised;

(2) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(3) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market;

(4) Consider the contributory value of any interest in land such as minerals, water rights, or timber to the extent they are consistent with the highest and best use of the property; and

(5) Estimate separately, if stipulated in the agreement to initiate in accordance with § 2201.1 of this part, the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 2201.1–1 of this part. In this case, the appraiser shall estimate the value of the Federal and non-Federal properties in a similar manner.

(b) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

(1) The various interests contribute their full value (pro rata) to the value of the whole; and

(2) The valuation is compatible with the highest and best use of the property.

(c) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

§ 2201.3–3 Appraisal report standards.

Appraisals prepared for exchange purposes shall contain, at a minimum, the following information:

(a) A summary of facts and conclusions;

(b) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(c) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(d) An adequate description of the physical characteristics of the lands being appraised; a statement of all encumbrances; title information, location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(e) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised;

(f) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(g) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(h) An estimate of market value;

(i) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(j) A certification by the appraiser signing the report to the following:

(1) The appraiser personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(2) The appraiser personally examined the subject property and all comparable sale properties relied upon in the report;

(3) The appraiser has no present or prospective interest in the appraised property; and

(4) The appraiser has not, and will not, receive compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(k) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment that were relied upon by the appraiser to estimate value, which may include but is not limited to current title reports, mineral reports, or timber cruises prepared by qualified specialists.

§ 2201.3–4 Appraisal review.

(a) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in § 2201.3–1 of this part. Statements of value prepared by agency appraisers are not subject to this review.

(b) The review appraiser shall determine whether the appraisal report:

(1) Is complete, logical, consistent, and supported by a market analysis;

(2) Complies with the standards prescribed in § 2201.3–3 of this part; and

(3) Reasonably estimates the probable market value of the lands appraised.

(c) The review appraiser shall prepare a written review report, containing at a minimum:

(1) A description of the review process used;

(2) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(3) The reviewing appraiser's statement of conclusions regarding the appraiser's estimate of market value; and

(4) A certification by the review appraiser to the following:

(i) The review appraiser has no present or prospective interest in the property that is the subject of the review report; and

(ii) The review appraiser has not, and will not, receive compensation that was contingent on the approval of the appraisal report.

§ 2201.4 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following schedule:

(1) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values of the lands involved in an exchange. If the parties cannot agree on the appraised values, they may agree to initiate a process of bargaining or some other process to resolve the dispute over values. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such reports. Bargaining or another process to determine values may involve one or more of the following actions:

(i) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(ii) Request for additional appraisals;

(iii) Involvement of an impartial third party to facilitate resolution of the value disputes; or

(iv) Use of some other acceptable and commonly recognized practice for resolving value disputes.

Any agreement based upon bargaining shall be in writing and made part of the administrative record of the exchange. Such agreement shall contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s) may, at the option of either party, be submitted to arbitration unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to

exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange, and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the terms of a proposed exchange, nor shall an award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 2201.5 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands that are of approximately equal value when it is determined that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and approved by the authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer shall determine that the Federal and non-Federal lands are approximately equal in value and shall document how the determination was made.

§ 2201.6 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree:

(1) To modify the exchange proposal by adding or excluding lands; and/or

(2) To use cash equalization after making all reasonable efforts to equalize values by adding or excluding lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 2201.1–3 of this part may not exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The parties may agree to waive a cash equalization payment if the amount to be waived does not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less. This provision shall not be applied to exchanges where the value differential is in excess of $15,000.

(d) A cash equalization payment may be waived only after the authorized officer determines in writing how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

§ 2201.7 Approval of exchanges.

§ 2201.7–1 Notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. A notice also may be published in the **Federal Register** at the discretion of the authorized officer. At a minimum, the notice shall include:

(i) The date of decision;

(ii) A concise description of the decision;

(iii) The name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) The date of the beginning of the protest period.

(2) The authorized officer shall distribute notices to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located pursuant to § 2200.0–6(m) of this part, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to protest.

(c) A right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR part 4.

§ 2201.7–2 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 2201.7–1 of this part. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement shall contain the following:

(1) Identification of the parties, a description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, the amount of any necessary cash equalization, and all other terms and conditions necessary to complete the exchange;

(2) The terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands;

(3) A description of the goods and services and their corresponding costs for which the noncomplying party is liable in the event of failure to perform or to comply with the terms of the exchange agreement; and

(4) The agreed upon values of the involved lands.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) In the event of a protest, or of an appeal from a protest decision under 43 CFR part 4, a decision to approve an exchange pursuant to § 2201.7–1 is upheld; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) Absent an executed legally binding exchange agreement, any action taken by one or more of the parties, or a failure of one or more of the parties to take any action, prior to consummation of an exchange does not create any legal obligation or right enforceable against or enjoyed by any party.

§ 2201.8 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, evidence of title for the non-Federal lands being conveyed to the United States shall be in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land

Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, all conveyances to the United States shall be prepared, executed, and acknowledged in recordable form and in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisition by the United States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States shall be by patent, quitclaim deed, or deed without express or implied warranties, except as to hazardous substances pursuant to § 2200.0–6(j)(1) of this title.

(c) *Title encumbrances.*—(1) *Non-Federal lands.* (i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the Office of the Solicitor of the Department of the Interior or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to agreed upon covenants or conditions included in the conveyance documents.

(iii) Any personal property owned by the non-Federal party that is not a part of the exchange proposal should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use in accordance with the terms and provisions of the instrument authorizing the use.

§ 2201.9 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States* v. *Schurz*, 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands simultaneously shall pass and be deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner shall be met. The requirements and conditions necessary for recordation at a minimum will include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands; and

(2) The issuance of title evidence as of the date and time of recordation, which conforms to the instructions and requirements of the Office of the Solicitor's preliminary title opinion.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically shall be segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title.

(c) *Notice to State and local governments.* Following the transfer of title to the Federal lands involved in an exchange, notice will be given to State and local officials as prescribed in § 2200.0–6(m) of this part.

Subpart 2202—Exchanges—National Forest Exchange

11. Section 2202.1 is amended by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 2202.1 Applicable regulations.

* * * * *

(b) If a proposal is made to exchange lands reserved from the public domain for National Forest System purposes, the authorized officer may request the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the record notation shall segregate the Federal lands from appropriation under the public land laws and the mineral laws as defined under § 2200.0–5 of this title for a period not to exceed 5 years from the date of notation.

(c) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(d) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published by the appropriate State Office of the Bureau of Land Management in the **Federal Register**, if a decision is made not to proceed with the exchange or upon deletion of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

Subpart 2203—Exchanges Involving ee Federal Coal Deposits

12. Section 2203.1 is revised to read as follows:

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon acceptance of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish and distribute a notice of exchange proposal as set forth in § 2201.2 of this title.

13. Section 2203.2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

* * * * *

(d) Where the entity proposing a fee coal exchange has previously submitted information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 [Amended]

14. Section 2203.3 is amended by removing the phrase "notice of realty action" in the third line of the introductory paragraph and replacing it with "notice of decision," and in the same paragraph removing the citation "§ 2201.1(e)" and replacing it with the citation "§ 2201.7–1."

* * * * *

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the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

There are currently no actions pending against the registration of this chemical. There is no expectation of residue occurring in meat, milk, poultry, or eggs from this tolerance. Based on the data and information submitted above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health. Therefore, EPA is establishing the tolerance as described below.

Any person adversely affected this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into accounted uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Lists of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 26, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.439 by adding and alphabetically inserting entries for the raw agricultural commodities field corn, fodder and forage, to read as follows:

§ 180.439 Methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate; tolerances for residues.

* * * * *

Commodity	Parts per million
• • • • •	
Corn fodder, field	0.1
Corn forage, field	0.1
Corn grain, field	0.05
• • • • •	

[FR Doc. 94-11991 Filed 5-17-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO-140-4210-02-24 1A; Circular No. 2654]

RIN 1004-AC18

Update Addresses of State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new addresses of 10 of the offices of the Bureau of Land Management (BLM). All filings and other documents relating to public lands in the respective States shall be filed at the new addresses of the State Offices having jurisdiction over the area involved.

EFFECTIVE DATE: May 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, (202) 208-4256.

SUPPLEMENTARY INFORMATION: This administrative final rule reflects the administrative action of changing the addresses for 10 of the State Offices of the BLM. It changes the addresses for the filing of documents relating to public lands in several States, but makes no other changes in filing requirements. Therefore, this amendment is published as a final rule with the effective date shown above.

Because this final rule is an administrative action to change addresses for 10 BLM State Offices, it has been determined that it has no substantive impact on the public. It imposes no costs, and merely updates a list of addresses included in the CFR for the convenience of the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this rule may take effect upon publication.

The principal author of this final rule is Heather Thomas of the Division of Legislation and Regulatory Management; BLM.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under Section 102(2)(C) of the National Environmental Policy Act (43 U.S.C. 4332(2)(C)) pursuant to Departmental Manual Part 516, Chapter 2, Appendix 1.10.

This rule is not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports address changes for BLM offices. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Further, the Department has determined that under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Reporting address changes for BLM State Offices will not have any economic impact whatsoever.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List Of Subjects In 43 CFR Part 1820

Administrative practice and procedures, Alaska, Archives and records, Public lands.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 12010), subpart 1821, part 1820, group 1800, subchapter A, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

1. The authority citation for part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

2. Section 1821.2–1(d) is amended by revising the entries for the BLM State Offices of Alaska, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, as well as Eastern States to read as follows:

§ 1821.2–1 Office hours; place for filing.

* * * * *

(d) * * *

State Office and Area of Jurisdiction

Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599—Alaska

* * * * *

California State, 2800 Cottage Way, Sacramento, CA 95825–1889—California

Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215–7076—Colorado

Eastern States, 7450 Boston Boulevard, Springfield, VA 22153—Arkansas, Iowa, Louisiana, Minnesota, Missouri and all States east of the Mississippi

Idaho State Office, 3380 Americana Terrace, Boise, ID 83706–2500—Idaho

Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings, MT 59107–6800—Montana, North Dakota and South Dakota

Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520–0006—Nevada

New Mexico State Office, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, NM 87502–7115—Kansas, New Mexico, Oklahoma, and Texas

Oregon State Office, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, OR 97208–2965—Oregon and Washington

Utah State Office, 324 South State Street, Suite 301, Salt Lake City, UT 84111–2303—Utah

* * * * *

Dated: May 4, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–12137 Filed 5–17–94; 8:45 am]

BILLING CODE 4310–84–P

43 CFR Public Land Order 7051

[CA–940–4210–06; CAS 052956]

Partial Revocation of Public Land Order No. 2460; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 1,302.14 acres of public lands withdrawn for the New Idria National Cooperative Land and Wildlife Management Area. The lands are no longer needed for this purpose. The revocation is needed to allow the lands to be exchanged under Section 206 of the Federal Land Policy and Management Act of 1976. This action will open the lands to the non-mineral public land laws unless closed by overlapping withdrawals or temporary segregations of record. The lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT:

Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2460, which withdrew public land for the New Idria National Cooperative Land and Wildlife Management Area, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 17 S., R. 12 E.,
Sec. 19, lots 1, 9, 10, 11, 12, 19, and 20;
Sec. 20, lots 11 to 15, inclusive;
Sec. 29, NW¼.
T. 19 S., R. 13 E.,
Sec. 13, W½SE¼;
Sec. 24, NE¼ and NE¼SE¼.
T. 19 S., R. 14 E.,
Sec. 18, lot 15 (described as SE¼NW¼ in PLO No. 2460) and E½;
Sec. 19, lot 13.

The areas described aggregate 638.01 acres in San Benito County and 664.13 acres in Fresno County.

2. At 10 a.m. on June 17, 1994, the lands will be opened to the operation of the non-mineral public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of records, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 17, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: May 4, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–12075 Filed 5–17–94; 8:45 am]

BILLING CODE 4310–40–M

#2656

EFFECTIVE DATE: The effective date of this rule is July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 1990 (55 FR 17376), EPA issued a SNUR establishing significant new uses for adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (P–89–653). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of May 5, 1993 (58 FR 26727). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result, EPA is revoking this SNUR.

II. Objectives and Rationale of Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to evaluate the risks of the substance. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the 5(e) consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50575 (P–89–653). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 25, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6600 [Removed]

2. By removing § 721.6600.

[FR Doc. 94–13683 Filed 6–3–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1720, 2070, 2510, and 8350

[WO–260–4212–02–24 1A; Circular No. 2656]

RIN 1004–AB98

Homesteading; Designation of Areas and Sites; Programs and Objectives

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule removes Bureau of Land Management (BLM) regulations on programs and objectives, designation of areas and sites, homesteads, and established areas from the Code of Federal Regulations. These regulations are obsolete either because their authorities have expired or been repealed, or they have been superseded by other regulations or supplanted by BLM Manual provisions.

EFFECTIVE DATE: June 6, 1994.

ADDRESSES: Inquiries and suggestions should be sent to: Director (260), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, (307) 775–6306.

SUPPLEMENTARY INFORMATION: Parts 1720, 2070, 2510, and subpart 8352 of title 43 of the Code of Federal Regulations are being removed in this administrative final rule. In some instances, the statutory authorities prompting a part either have been repealed or have expired. In other cases, the provisions of a part have been superseded by other regulations or replaced by BLM Manual provisions.

Part 1720, which is being removed by this rule, lists policies pertaining to the disposal and management of the public lands as managed by BLM before the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1700 *et seq.* These pre-FLPMA policies were based, to a considerable extent, on the Classification and Multiple Use Act, which expired according to its own terms on December 23, 1970. The BLM's post-FLPMA management and disposal policies now are reflected not only in FLPMA, but also in BLM's land use planning regulations, along with its other management- or disposal-related regulations, and its manualized instructions to BLM personnel. The BLM's Manual is open to public inspection. See 43 CFR 2.3.

Part 2510 pertains to the homestead laws that were repealed on October 21, 1976 (as to Alaska, October 21, 1986), by FLPMA. Because homestead entries no longer can be made with regard to the public lands of the United States, the regulations in this part are no longer needed.

Part 2070 and subpart 8352 were used to designate areas and sites. The types of designations referred to in these provisions have all been superseded by designations created in FLPMA and other laws. Such designations include areas of critical environmental concern, covered in 43 CFR part 1600; national conservation areas and national recreation areas, covered in various specific resource management regulations; wilderness, covered in part 8560; and national trails and rivers, covered in part 8350.

Because this final rule is an administrative action to remove obsolete provisions, it has been determined that it has no impacts on the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this rule may take effect upon publication.

The principal author of this final rule is Jim Paugh of the BLM Wyoming State Office, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely removes obsolete regulations no longer governing activities on the public lands. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Removing obsolete regulations that no longer govern activities on the public lands will have no economic effect whatsoever.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 1720

Forests and forest products, Grazing lands, Natural resources, Public lands, Public lands-mineral resources, Public lands-sale, Recreation and recreation areas, Watersheds, Wilderness areas, Wildlife.

43 CFR Part 2070

Natural resources, Public lands, Public lands-classification, Recreation and recreation areas.

43 CFR Part 2510

Homesteads, Irrigation, Reclamation.

43 CFR Part 8350

National Trails System, National Wild and Scenic Rivers System, Penalties, Public lands.

For the reasons stated in the preamble, and under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), chapter II, subtitle B, title 43 of the Code of Federal Regulations, is amended as set forth below:

PART 1720—[REMOVED]

1. Part 1720 is removed.

PART 2070—[REMOVED]

2. Part 2070 is removed.

PART 2510—[REMOVED]

3. Part 2510 is removed.

PART 8350—[AMENDED]

4. The authority citation for 43 CFR part 8350 continues to read as follows:

Authority: 16 U.S.C. 1241, 16 U.S.C. 1271, 43 U.S.C. 1701 *et seq.*

5. Part 8350 is amended by removing subpart 8352, consisting of sections 8352.0–1, 8352.0–2, 8352.0–5, 8352.0–6, 8352.1, 8352.2, 8352.3, and 8352.4.

Dated: May 11, 1994.

Nancy Keir Hayes,

Assistant Secretary of the Interior.

[FR Doc. 94–13595 Filed 6–3–94; 8:45 am]

BILLING CODE 4310–84–P

43 CFR Public Land Order 7056

[AK–932–4210–06; AA–16807]

Partial Revocation of Executive Order No. 4257 Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order insofar as it affects approximately 54.47 acres of National Forest System land and 8.91 acres of public land withdrawn for use by the Coast Guard, Department of Transportation, for the Woronkofski Point Lighthouse. The land is no longer needed for the purpose for which it was withdrawn. This action will also open the land within the Forest to such forms of disposition as may by law be made of National Forest System land. The land has been and will continue to be subject to the Tongass National Forest reservation. Upon revocation, the public land will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 4257 dated June 27, 1925, which withdrew National Forest System land and public land for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Tongass National Forest

A parcel of land located within secs. 5 and 6 of T. 63 S., R. 83 E., described as U.S. Survey No. 1712, excluding the following parcel:

Beginning at a point which is S. 87°21'00.6" E., 309.65 feet from U.S.L.M. No. 1712, at approximate latitude 56°26'00" N., longitude 132°30'30" W;

Thence S. 23°20'04" W., 219.26 feet;
Thence N. 68°00'42.2" W., 163.49 feet;
Thence N. 58°17'00" W., 69.30 feet;
Thence N. 25°03'00" W., 56.10 feet;
Thence N. 20°08'00" W., 42.24 feet;
Thence N. 39°08'00" E., 50.16 feet;
Thence S. 79°08'00" E., 257.40 feet.

[FR Doc. 94-23114 Filed 9-16-94; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850

[WO-660-4191-02-24 1A; Circular No. 2657]

RIN 1004-AC17

Mining Claims; Maintenance and Location Fees; Lands Open to Location; National Parks, King Range National Conservation Area, Indian Reservations, Surface Management; Removal of Obsolete or Expired Regulations, Consolidation of Remaining Sections; Final Rule; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule implementing provisions of the Omnibus Budget Reconciliation Act of 1993 that require a $25 location fee and a $100 annual maintenance fee for each mining claim and site located and held under the general mining laws. The rule was published Tuesday, August 30, 1994 (59 FR 44846).

EFFECTIVE DATE: August 30, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Bruno (202) 452-0350 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need For Correction

As published, the final rule contains an error which may prove to be misleading and, therefore, needs clarification.

Correction of Publication

Accordingly, the publication on August 30, 1994, of the final rule (WO-660-4191-02-24 1A; Circular No. 2657), which was the subject of FR Doc. 94-21388, is corrected as follows:

On page 44862, in the first column, in § 3833.1-7, paragraph (e)(1), line 12, the cross-referenced paragraph "3833.0-5(y)" is corrected to read "3833.0-5(x)".

Nancy K. Hayes,

Acting Assistant Secretary of the Interior.

[FR Doc. 94-23133 Filed 9-16-94; 8:45 am]
BILLING CODE 4310-84-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940951-4251; I.D. 081694B]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 6 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this rule is to reduce the catch of juvenile silver hake in the Cultivator Shoal whiting (silver hake) fishery by increasing the minimum mesh size from 2½ inches (6.35 cm) to 3 inches (7.62 cm).

EFFECTIVE DATE: October 19, 1994.

ADDRESSES: Copies of Amendment 5 to the FMP, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 6 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP, published May 31, 1991 (56 FR 24724), established the Cultivator Shoal whiting fishery, a specified area within the Gulf of Maine/Georges Bank Regulated Mesh Area. For 3 years preceding Amendment 4, NMFS had conducted an experimental fishery program in the Cultivator Shoal area using NMFS sea samplers to collect data about the silver hake fishery and particularly about the regulated species bycatch. The data collected by sea samplers led to the conclusion that the Cultivator Shoal whiting fishery had minimal impact on regulated species.

Under the terms of Amendment 5 to the FMP (59 FR 9872, March 1, 1994), vessels may fish for silver hake in the Cultivator Shoal area from June 15 through October 31, unless otherwise specified, if the vessel: (1) Has onboard a letter of authorization issued by the Director, Northeast Region, NMFS (Regional Director); (2) has a minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted from the terminus of the net; and (3) does not exceed the possession limit of regulated species as specified in 50 CFR 651.27(a).

Fishing industry members recently asked the New England Fishery Management Council (Council) to adopt more restrictive regulations to conserve the silver hake stocks and protect this resource from a potential increase in fishing effort directed at the juvenile component of the stocks. Their concerns are based on at least two recent developments in the industry that directly affect the silver hake fisheries, as well as on the assessment scientists' uncertainty about the stock status and the impact of those recent changes.

First, as restrictive management plans are implemented in other fisheries in the region, a significant amount of potential fishing effort is being displaced. Fishers anticipate that some portion of that displaced fishing effort will be directed on silver hake, since this fishery is relatively unregulated and the stocks are comparatively stable. The effect of a sudden increase in fishing effort on silver hake stocks and markets is uncertain, but potentially detrimental to both. The most recent advisory report from the Stock Assessment Workshop (SAW) in February 1994, which was SAW #17, states that, although there are uncertainties regarding the exploitation pattern in the silver hake fishery, it is recommended that any increase in effort on these stocks be avoided.

Second, in the past year, an export market for juvenile silver hake has emerged. The potential demand from this new market and its impact on the stocks are unknown. Assessment scientists, while acknowledging that natural mortality rates of juvenile silver hake are high and that discards of juveniles in the traditional silver hake fisheries are excessive, caution against any increase in fishing effort directed at the juvenile sector. If juvenile mortality increases, the spawning stock biomass will decline and the catch of large silver hake in traditional fisheries will also decline.

Generally, increasing the mesh size will delay the age at which fish become susceptible to the gear, thereby reducing juvenile mortality. Increasing the mesh size from 2½ inches (6.35 cm) to 3 inches (7.62 cm), is intended to prevent a shift in the exploitation pattern to younger fish in order to supply the juvenile export market.

With so many uncertainties and the need for caution surrounding the impacts of the emerging juvenile fishery and the displacement of effort from

#2657

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850

[WO–660–4191–02–24 1A; Circular No. 2657]

RIN 1004–AC17

Mining Claims; Maintenance and Location Fees; Lands Open to Location, National Parks, King Range National Conservation Area, Indian Reservations, Surface Management; Removal of Obsolete or Expired Regulations, Consolidation of Remaining Sections

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Omnibus Budget Reconciliation Act of 1993 (the Act) that require a $25 location fee and a $100 annual maintenance fee for each mining claim and site located and held under the general mining laws. The fee requirements remain in effect through 1998, and apply to the assessment years through 1998–99. The final rule establishes the procedures for paying and administering the required annual maintenance and location fees, puts into regulation the statute's mandatory payment deadlines and its mandatory provision that failure to pay the fees on time constitutes abandonment of the claim or site, amends the recording and assessment work regulations to conform to the requirements of the Act, and establishes procedures by which small miners may obtain a waiver from payment of the maintenance fee. The final rule also implements the new location and recording requirements for mining claims located on Stockraising Homestead Act lands. These requirements are contained in the Act of April 16, 1993 (107 Stat. 60). It also removes obsolete or expired provisions, and consolidates provisions that are still in force and effect in the regulations concerning location and entry of mining claims and sites on coal bearing lands, National Park System units, the King Range Conservation Area, and Indian reservations.

EFFECTIVE DATE: August 30, 1994.

ADDRESSES: Any suggestions or inquiries should be sent to: Director (660), Mail Stop 501, Bureau of Land Management, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Frank Bruno or Roger Haskins at (202) 452–0350.

SUPPLEMENTARY INFORMATION: A proposed rule amending certain sections of the regulations at 43 CFR parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850 was published in the Federal Register on May 11, 1994 (59 FR 24572). There were 25 comments received regarding the proposal. Six comments were received from Bureau of Land Management (BLM) State Offices, 4 comments were received from private attorneys, 3 comments were received from individuals not connected with the mining industry, 3 comments were received from mining claimants, 3 comments were received from mining industry organizations, 1 comment was received from an individual in a mining-related business, 1 comment was received from a county government, 1 comment was received from an environmental group, 1 comment was received from a mining company, 1 comment was received from a Forest Service employee, and 1 comment was received from an individual BLM employee.

The Department of the Interior, in accordance with 5 U.S.C. 553(d), for good cause finds that it would not be in the public interest to delay the effective date until 30 days after publication. The deadline for payment of the annual maintenance fee is August 31, 1994. The mining industry needs as much time as possible to comply with the rule, and the BLM State Offices will not be able to accept filing and payments, or to assist the public in other ways, until the rule is effective.

General Comments

The proposed rule contained several references to the Act of October 5, 1992, which established the mining claim rental fee that has been in effect since the date of its enactment and which will expire on September 30, 1994. For the sake of simplicity, and because (1) The maintenance fee essentially replaces the original rental fee, (2) the rental fee statute will expire on September 30, and (3) any remaining issues regarding the rental fee can be dealt with using the regulations that implemented the October 5, 1992, Act, which were codified in the 1993 Code of Federal Regulations (CFR), all references to the 1992 Act have been removed from this final rule, including references to rental fees.

The comments addressed all aspects of the proposed rule. They were all given careful consideration and are addressed in this preamble.

One comment asked whether the $10 service charge for recording notices of location was being eliminated. The answer is no, because it is required for cost recovery purposes. The service charge requirement is retained in § 3833.1–4(a).

One comment expressed uncertainty as to when the new maintenance fee was to be effective. The maintenance fee for existing claims is first due to be filed on or before August 31, 1994, to hold the claim for the 1994–1995 assessment year.

One comment stated that the maintenance fee should not be subject to increases tied to the consumer price index and that such increases would put the fee out of sight for small miners. The comment further stated that these increases should not apply to those holding 10 or fewer claims. The provision to adjust maintenance fees to reflect changes in the consumer price index is statutory and cannot be changed in this rule. However, it would not affect small miners who file a valid waiver certification statement. Such individuals would not have to pay the maintenance fee, but would continue to perform $100 worth of assessment work as required by the Mining Law of 1872.

One comment stated that this rule and other unspecified changes in the Mining Law were being done without congressional authorization and are putting the mining industry out of business. The rule is being promulgated and is explicitly required by Section 10106 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 407), as enacted by Congress. Despite the reduction in active mining claims on Federal lands since $100 fees were first required in the 1992–93 assessment year, there is no substantial evidence to suggest that the fee is driving the bona fide mining industry out of business.

One comment objected to the short notice given in the proposed rule on May 11, 1994, that assessment work to hold the claim for those claimants qualifying as small miners for the assessment year beginning on September 1, 1994, must be completed in the assessment year ending on that date. However, enactment of the Omnibus Budget Reconciliation Act on August 10, 1993, predated the beginning of the assessment year ending on September 1, 1994, and served as ample notice for those claimants seeking to qualify as small miners under the new legislation.

One comment objected to any change in the Mining Law. Since the Congress has amended the Mining Law to require a maintenance fee, no changes in the

rule are warranted as a result of this comment.

Two comments stated that references to the due date for payment of the initial maintenance fee, which is made at recordation of the notice of location and within 90 days after location, were ambiguous. The comment identified the problem as a possible conflict between the location date on the notice of location and the location date under State law. However, pursuant to 30 U.S.C. 28, the date of the location of the mining claim is fixed under State law, and that is the date used by BLM to determine the 90-day period under the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*).

One comment from a county government stated that the removal of the requirement to file assessment work with BLM for those who pay the maintenance fee will cause the same problems as those that occurred under the rental fee requirements imposed by the Interior Department and Related Agencies Appropriations Act of 1993. The comment stated that because the Federal requirement to record annual labor with BLM had been lifted, filings were not being made with county recorders, affecting the record title history as well as State tax collections. Filings may still be required under State law. If State law does not require filing with county recorders, then State law could be amended to remedy the problem. Also, miners may risk losing their claims to third parties if they do not record with county recorders, and are urged to comply with State and Federal mining laws.

One comment stated that there was some confusion with the term "record" as used in the proposed rule. The comment said that the term should be defined to apply only to county recordings and never to BLM "filings." The term "record" has been used to refer to certain BLM filings for many years. Any reference to BLM recordation in the regulations clearly refers only to BLM requirements for filings in the proper BLM office. It is inappropriate to provide for exclusive application of the term to county recordings.

One comment stated that a notarized signature from each owner on a new notice of location should be required for State and Federal tax purposes. The addition of this requirement would be of no value to BLM, because BLM is not the official repository of mining claim ownership records. The States should ensure that their laws are adequate to trace ownership for tax purposes.

One comment stated that the rule should require a notice of intention to hold to be filed in the local State jurisdiction in certain circumstances. No such requirements can be added to this rule, because the 1993 Act does not impose a filing requirement equivalent to the filing requirements in Section 314 of FLPMA. It is therefore up to the States to impose such requirements as long as the 1993 Act remains in effect.

One comment stated that the rule should require that relinquishments contain notarized signatures of every owner in order to protect all owners from having their interests voided without their consent. This is not necessary because relinquishments relate only to the claimant making the relinquishment, and only his or her interest would be dropped, not the interests of other claimants.

One comment stated that it is unclear who is required to submit changes of address to BLM and pay the service charges. It is the owner's responsibility, not a lessee's. The owner is also referred to as the mining claimant. A transferee could also be an owner or a claimant. However, while BLM does not adjudicate who pays the fee for a mining claim, it holds the mining claimant responsible if the fee is not paid.

One comment asked whether the purpose for filing changes of address as requested in the rule is to help ensure that claimants receive proper notice regarding their claims. The answer is yes.

One comment asked why the rental fee is now called the maintenance fee. The October 1992 statute used the term rental fee, and the August 1993 statute used the term maintenance fee. The second term more accurately reflects the nature of the fee, since it is not considered rent, a service charge, or a tax. It is a payment required to maintain the mining claim in good standing.

43 CFR 3833.0–3

One comment stated that it would not be proper to file a notice of intention to hold a mining claim pursuant to § 3833.0–3(a) if a waiver is filed. This is true. The waiver for a mining claim can only be allowed if assessment work is done.

One comment suggested a rewording of paragraph (g)(1)(i) for clarity. This modification has been made to make it clear that it is the mining claimant who files the notice of intent to locate a claim.

43 CFR 3833.0–5

One comment stated that paragraph (e), the definition of "owner or claimant," should not require the name and address of all owners on documents referred to in the subpart, but should only require the filer's name and address. This requirement exists large to protect each claimant's interest in being served in the event of an appeal or other need for communication. Therefore, it will be retained.

Three comments asked whether paragraph (m), the definition of "file" or "filed," was intended to allow notices of location or certificates of location to be subject to the postmark rule. The answer is yes, and the paragraph has been further amended in the final rule to make it clear that, in addition, location notices and certificates of location also will be accepted if postmarked by the end of the 90-day filing period. In response to a comment, the paragraph now refers to the filing of a maintenance fee waiver certification statement rather than the filing of a maintenance fee waiver: the former is a more accurate term.

One comment asked whether paragraph (m) was intended to allow $100 fee and waiver filings to be accepted if postmarked by August 31 and received in the proper BLM office within 15 days of that date. The answer is yes.

Two comments said that new location notices should not be subject to the postmark rule pursuant to paragraph (m). All other filings are similarly subject to the postmark rule. The comments give no reason for location notices to be treated differently.

One comment questioned whether BLM has the authority to extend the postmark rule to filings under the Act of August 10, 1993, since the Act specifically states that annual fee filings must be made by each August 31. The best precedent for this is the longstanding administrative practice for annual filings under Section 314(a) of FLPMA. Section 314(a) states that annual filings shall be made prior to December 31 yearly. However, the postmark rule has been applied to these filings for years by regulation as a practical way of treating such filings received through the postal system, and it has been upheld by the Interior Board of Land Appeals. The same practical consideration applies here.

One comment asked whether paragraph (m) is in conflict with § 1821.2–2(f), which does not recognize the postmark rule except in certain instances. Section 1821.2–2(f) applies to the filing of applications only, and paragraph (m) applies to filing notices of locations and payment of fees. No conflict exists between the two sec

One comment stated that paragra (m) meant that if a claimant's maintenance fee filing was postmarked on August 16 or before that the claims

would be forfeited. This is not true. The filing can be postmarked any time on or before August 31, as long as it is received in the proper BLM office no later than 15 days after August 31.

One comment asked whether paragraph (m) was meant to allow postmarks that fall on holidays and weekends. Deadlines that fall on a day the BLM office is closed are carried over to the next working day.

One comment asked whether paragraph (m) was restricted to mailings postmarked by the U.S. Postal Service. This paragraph has been amended to include other mail delivery systems that are independent of the claimant and for which the date of filing with the system can be verified.

Paragraph (o)(1) is amended to state clearly that the FLPMA filing due on December 30, 1999, is the last FLPMA filing affected by the Act of August 10, 1993.

Paragraph (o)(2) is removed in the final rule because it duplicates § 3833.1–7(d). A comment received concerning the wording of this paragraph is therefore moot.

Paragraph (o)(3) is removed because it duplicates § 3833.1–5(b) as it is revised in this final rule. Thus, the concerns raised in two comments that referred to the conflicting wording of these sections have been addressed.

Because of the removal of paragraphs (o) (2) and (3), paragraph (o)(1) is merged into the introductory text of paragraph (o).

Paragraph (w) has been simplified to remove information provided elsewhere in the rule.

Paragraphs (bb) and (cc) are amended to reference § 3833.1–1, which is the final rule redesignation of § 3833.1–8 of the proposed rule.

One comment suggested that paragraph (cc) should provide that refunds of payments made by credit card will be made as a credit to the card account. This suggestion has been adopted in the final rule.

43 CFR 3833.1–1

Although it was not addressed in the proposed rule, the existing language of this section is removed in its entirety and replaced with § 3833.1–8 of the proposed rule. The old section is being removed administratively in this final rule because it deals with obsolete requirements. Because this amendment is an administrative action to remove obsolete provisions, it has been determined that it has no impacts on the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this amendment may take effect upon publication.

43 CFR 3833.1–2

In the proposed rule published on May 11, 1994, a paragraph (c) was added to § 3833.1–2 to establish a basic process for compliance with Public Law 103–23 of April 16, 1993. This Act (107 Stat. 60) amended the Stockraising Homestead Act of 1916 (43 U.S.C. 299) by establishing new mining claim location and surface operations requirements for lands patented under the Stockraising Homestead with a reservation of the mineral estate to the United States. The Act became effective on October 13, 1993. To implement the Act of April 16, 1993, the Department has begun formulating regulations on locating claims and obtaining permission for exploration and mining on lands patented under the Stockraising Homestead Act. These regulations will be proposed as additions to 43 CFR subpart 3814.

A Departmental review demonstrates a need to have a basic location, recording, and notification procedure put into place as soon as possible in order to avoid legal problems between surface owners, mining claimants, and the Department over rights of location and entry on Stockraising Homestead lands under the Act of April 16, 1993. Therefore, as a logical outgrowth of the language included in the proposed rule, a new paragraph (d) is added to section 3833.1–2 to explain more fully the basic procedural requirements for locating and entering mining claims on Stockraising Homestead Act lands. This language reiterates, to a large degree, the language of the statute.

One comment requested that paragraph (c)(3) of the proposed rule be reworded for clarity. The final rule has been amended to make it clear that mining claims located on lands patented under the Stockraising Homestead Act, as amended, will not be recorded unless the claimant complies with the requirements in § 3833.1–2.

43 CFR 3833.1–3

Paragraph (c)(3) has been removed because the information appears elsewhere in the section.

Two comments said that § 3833.1–3 was confusing. The statute establishes payment deadlines for some types of fees, but allows payment deficiencies in other types of fee situations to be curable. The comments suggested that this section be made uniformly curable or non-curable to promote ease of administration. This section was developed in an effort to strike a balance among ease of administration, public service, and consistency with the law. Because of the statutory nature of the maintenance fee, it is not possible to make nonpayment of that fee curable. The fact that this deadline is firm is not an adequate basis for making other fee payment deficiencies non-curable.

One comment said that § 3833.1–3 ought to allow the claimant a chance to choose which mining claims should have partial payments applied to them before BLM imposes its system for making this determination. This amendment has been added in this final rule.

One comment said that the proposed rule was not clear about the treatment of insufficient maintenance fees paid for new locations. The requirements for this situation are explained in paragraph (b)(1).

One comment stated that a phrase in paragraph (b)(2), which provides that new claims rejected for insufficient service charges will be returned to the claimant/owner unprocessed, should be replaced by language requiring that a rejection decision be sent after the claims are serialized (given BLM identification numbers). Claims for which service charges have not been paid cannot be serialized because the missing or insufficient service charges are supposed to pay for such processing. Therefore, absent service charges, there is no serialization, and thus no claims of record, and there cannot be a formal decision on the disposition of the claims.

One comment said that paragraph (b)(2) is too complicated and suggested that missing service charges be made a non-curable defect. Making this change would not remove any administrative costs and would create the possibility of rigid and unfair application. For instance, a claimant could file $250 to cover two claims, rather than the proper $270 (which includes two $10 service charges, two $100 maintenance fees, and two $25 location fees). Under the scenario envisioned in the comment, BLM would have to apply $135 to one claim and then have the expense of refunding $115 and returning the second claim or writing a decision if the maintenance fee deadline had passed. The BLM prefers to apply the $250 to each claim ($125 each), and call for the additional $20 in service charges to complete the recording process.

Pursuant to a comment, paragraph (b)(2) has been reworded to eliminate confusion as to which of two apparent deadlines for paying a service charge applies. New paragraph (b)(3) has been added in the final rule to address the consequences of partial payment of service charges.

One comment asked that the policy on treatment of payment of insufficient mandatory fees be clarified. (The comment referred to the required $100 maintenance and $25 location fees.) This policy will not be put in the rule, but will be included in the BLM Manual. When the payment submitted does not cover all of the fees due, the BLM will apply all fees sequentially beginning with the first numbered claim of that claimant and to as many thereafter as the paid funds allow. For instance, if a claimant submits $200 for two new locations, BLM would not consider this complete payment of maintenance fees for two claims, leaving the location fees and service charges unpaid for both, but would apply the payment entirely to the first claim before applying any money to the second. Thus, BLM would apply $125 ($100 for the maintenance fee and $25 for the location fee) initially toward the first claim. Because the remaining $75 would be insufficient to cover the mandatory fees on the second claim, the second claim would be voided for failure to pay the required fees. A portion of the remaining funds would then be applied toward the first claim for the $10 service charge. If the claimant submits other instructions on how to apply the fees, such instructions will be followed, if possible.

One comment asked whether paragraph (c)(2) meant to allow a claimant to choose which claims or sites will be dropped if the maintenance fee payment is not sufficient for all of their claims. The answer is yes. However, if the claimant does not notify BLM of the preference, then BLM will apply the fees to those claims in ascending numerical order of serialization.

One comment requested that cross references to §§ 3833.1–4 and 3833.1–5, provisions on service charges and maintenance fees, be added in paragraph (c)(2). This did not seem necessary, in part due to the physical proximity of the provisions.

One comment said that paragraph (c)(3) should be changed to remove the phrase "* * * existing recorded and serialized mining claims and sites * * *" and to substitute the phrase "* * * the list of claims submitted by the claimant * * *." This change has not been made, but rather, the paragraph has been removed from the final rule because it largely repeats provisions of paragraph (c)(2).

43 CFR 3833.1–4

One comment stated that paragraph (b) was unclear in its reference to "recording." This paragraph has been amended to make it clear that the reference is to recordation with BLM.

One comment said that the reference in paragraph (f) to facsimile authorizations may cause problems, because some have been misdirected in the past. A misdirected facsimile would not be considered a filing in the proper office; no filing or payment is complete or proper until it is received in the appropriate office.

One comment suggested that paragraph (g) should allow overpayments to be credited to declining deposit accounts. This amendment has been made to the final rule.

43 CFR 3833.1–5

The introduction to this section has been simplified to remove information that is provided elsewhere in the regulations. The sentence referring to the application of paid rental fees to the maintenance fee was removed, because it confused the two fees and erroneously applied the succeeding statutes. There is no possibility under either statute that the rental fees covering 1992–93 and 1993–94 could be applied to the maintenance fees covering assessment years beginning with 1994–95. Also, the reference to § 3833.1–8 has been changed to § 3833.1–1 because of a redesignation in the final rule.

Paragraph (h)(2)(i) is removed in the final rule because it contains information provided elsewhere in the regulations.

Three comments questioned whether it was correct to say that the assessment years covered under the Act of August 10, 1993, end on September 1, 1999. It is correct because a maintenance fee paid on or before August 31, 1998, will hold the claim through September 1, 1999.

One comment questioned whether this section allows claimants to have more than 10 claims waived. The answer is no. The language clearly refers to § 3833.1–6, which explains that the waiver can apply only to those with 10 claims or fewer.

One comment said that the reference in the first sentence of this section to § 3833.1–8 in the proposed rule was incorrect because § 3833.1–8 did not make an exception from payment of the maintenance fee. This first sentence refers to § 3833.1–8 in the proposed rule, redesignated as § 3833.1–1 in the final rule, because the section referred to provides for refunds in certain cases. Therefore, the reference is necessary because it shows that the maintenance fee is not always nonrefundable, not because the section referred to provides for some exception to the payment requirement.

One comment asked whether maintenance fees can be paid for years in the future despite the fact that assessment work always has had to be performed annually. The answer is yes because the maintenance fee has only to be paid on or before the August 31 deadlines, so that a claimant could pay $500 to hold a claim through September 1999. In the event, however, that the fee is adjusted pursuant to Section 10105(c) of the Act, reconciliation payments or refunds may be necessary. Assessment work requirements for small miners remain the same.

One comment stated that paragraph (a)(1) was unclear in its reference to the "time of recording." The final rule has been amended to make it clear that this refers to filing with BLM.

One comment said that it was incorrect for paragraph (a)(2) to allow no waiver for the initial claim maintenance fee due upon recordation of a new claim. The small miner waiver is a discretionary waiver. A waiver of the initial maintenance fee for small miners would be unnecessarily difficult to administer and impossible to apply equally to all miners. Varying filing requirements arise when miners perform assessment work at different times during the assessment year, and in some instances, new locations could change the status of some small miners. As a matter of discretion, therefore, BLM will not allow a waiver for the initial maintenance fee required upon location of a new claim.

Several comments stated that paragraph (a)(1) does not account for the situation where the August 31 filing deadline falls within a new location's 90-day recording period. Language similar to that in the rental fee regulations has been added in paragraph (a) to cover this situation.

One comment requested that a requirement be added to paragraph (b) in which the claimant would indicate for which year a submitted maintenance fee is intended. This extra requirement was not added because in almost all cases it will be apparent which year the fee is intended.

One comment said that paragraph (g) should be removed because a small miner who transfers a claim has complied with the Act, but would have to sell the claim for $100 less to a non-small miner transferee. The comment stated that this would effectively take away the small miner's waiver. Such a result in claim transfer negotiations is not certain. In addition, this provision cannot be changed because the statute is very explicit that a claimant who has

more than 10 claims is required to pay the fee. The purchase price that is negotiated could be any amount decided by the two parties and by no means has to reflect the maintenance fee to be paid by the non-small miner transferee.

Two comments addressing paragraph (g) asked what would happen if only a percentage of the interest in a claim subject to a waiver, rather than the whole interest, was transferred to a party not entitled to a waiver. Because a response to this question depends on whether the parties are related, a general answer cannot be given here. However, the paragraph is amended to add the phrase "or in part."

Two comments asked what would happen if, unlike the situation described in paragraph (g), a waived mining claim was transferred to someone who qualified for a waiver. In such a case the claim would be waived as long as the new owner still qualified for the waiver with the addition of the new claim.

One comment stated that the reference in paragraph (g) to the "time of filing" the transfer of interest should be changed to the effective date under State law. This is correct and the amendment has been made in the final rule.

One comment stated that paragraph (g) should not allow payments after the applicable August 31 deadline in cases where claims are transferred to an entity not entitled to a waiver, because there is no statutory authority for such extensions. This is correct and the final rule has been amended accordingly.

One comment asked whether paragraph (h) will cause claimants who had already paid under the old rate to have to make additional partial payments. For purposes of clarification, paragraph (h)(2) has been amended in the final rule to eliminate the possibility of second payments being required in any given year as a result of an increase. If payments are made in advance of the year in which the fee is due, additional partial payments would be required if the fee is adjusted upward for that year.

One comment stated that the public notice provided for in paragraph (h)(1) should be done by letter to each individual miner. No decision has been made on how public notice under this paragraph will be accomplished, but it will be within the guidelines of the Administrative Procedure Act, which controls all such methods of official notification, and applicable case law.

One comment asked whether a possible upward adjustment of the maintenance fee per paragraph (h)(2) would mean that the small miner would have to do assessment work of an increased value as well. The answer is no. The amount of assessment work to be performed is established in the Mining Law of 1872. The maintenance fee is in lieu of assessment work required, the value of which has not been amended. No further clarification is necessary in the regulations on this point.

One comment questioned some of the references in paragraph (i). This paragraph has been removed in the final rule, because its contents are stated elsewhere in §§ 3833.1–5 and 3833.1–6.

43 CFR 3833.1–6

Paragraph (a)(1) was amended to make it clear that for purposes of obtaining the small miner waiver, the claimant is required to certify that he or she owns 10 claims or fewer on the date payment is due, which is August 31 of each year the Act of August 10, 1993, remains in effect.

Two comments challenged this section of the proposed rule, correctly observing that the Secretary is not required to offer a small miner waiver under the Act of August 10, 1993. One comment stated that the Secretary also had the choice of not offering the waiver or offering some other kind, such as a one-claim waiver. The comment went on to ask about the analysis that went into the decision to offer the 10-claim waiver and pointed out the administrative costs and loss of revenue to the government in offering it (the other comment was also concerned with administrative costs). It further asked what percentage of claims of record are owned by those with 10 or fewer claims. It also said that the National Performance Review requested by the President states that the Government should get a fair return for Federal resources and the waiver runs counter to this idea. There is nothing to suggest that Congress intended anything other than for the Secretary to decide whether to offer the 10-claim waiver as outlined in the Act, or not to offer it at all. The statute allows the Secretary discretion to offer the waiver to small miners, but defines small miners very specifically. Also, the Act essentially extends the previous rental fee statute, which offered a similar 10-claim exemption. Therefore, no other types of waivers such as a one-claim waiver were considered. The choice to offer the 10-claim waiver was made primarily because the fact that Congress included the waiver in the legislation, although within the Secretary's discretion, and included specific criteria for implementing it, suggests that Congress believed that allowing the waiver is appropriate in certain circumstances, which the statute proceeds to lay out in detail. It is true that there is an administrative cost and a loss of revenue to the Government because of the waiver. It was determined, however, that these costs are justified. The decision to offer the waiver does not conflict with the National Performance Review, because the Administration's position concerning a fair return for resources must be applied in light of the particular facts involved, including other Administration positions, such as the policy of helping small business. Additionally, it is the Administration's position that a royalty on production should be instituted in separate Mining Law reform legislation, which would also apply to small miners. This is where the return for resources is more fairly applied. Only approximately 10 percent of all active mining claims on Federal land are eligible to be excused from the maintenance fee, so the vast majority of claims will be subject to maintenance fees paid by the claimants.

One comment stated that paragraph (a) should not allow mill and tunnel sites to be waived if listed on a small miner waiver certification. Such sites will be eligible for waiver, because the Act of August 10, 1993, specifically allows a waiver of the maintenance fee required for mining claims and mill or tunnel sites.

One comment objected to paragraph (a)(1), which allows a small miner to pay the fee as well as file for a waiver if so desired. The comment stated that this is misleading because the fee is nonrefundable and the fee waiver would become moot. The comment suggested that in such a case as this the fee should be refunded if a small miner waiver is found to be valid. The purpose of this paragraph, which is similar to language which implemented the rental fee, is to make clear that there is no penalty for both paying the fee and filing the waiver. The BLM has had a policy of not offering refunds in cases such as this because of the significant costs associated with processing refunds, and because a decision to pay the fee and file the waiver is entirely within the discretion of the claimant. It has been determined that such costs go beyond basic public service and represent a burden on the taxpayer. However, the regulation provides at § 3833.1–1(d) that in such a case the claimant could apply the payment to a subsequent year if the most current claim fee is waived through the small miner certification process.

Two comments asked whether paragraph (a)(1) allows for claimants to pay the fee for some claims and get the waiver for some if they have 10 or fewer total. The answer is no because the

statute requires that if eligible claimants decide to apply for the small miner waiver they must do so for all their claims. This paragraph does allow for a claimant to both pay and file for a small miner waiver for all or some of his or her claims, but all of the claims count in deciding whether the claimant is qualified for the small miner waiver.

One comment stated that paragraph (a)(1) should provide that if only one co-owner has more than 10 claims that only his or her interest in the claims will be forfeited in the event of non-payment under § 3833.4. This depends on the relationship between the parties. If the co-owners are not related parties as defined in the law and this rule, the claim would be void as to the non-small miner co-owner only.

Regarding paragraph (a)(3) one comment asked how a claimant makes a certification for mill and tunnel sites when assessment work is not required for sites. Simply listing sites on the small miner waiver form will act as a notice of intention to hold and will suffice for certification.

One comment asked whether, pursuant to paragraph (a)(3), a small miner who owned only mill or tunnel sites could get a waiver. The answer is yes.

One comment said that paragraph (a)(3) should state that mill and tunnel sites are required to be active for the fee to be waived. The maintenance fee is collected only in lieu of the assessment work requirement, 30 U.S.C. 28–28e. No activity level is specified for mill sites in those sections of the Mining Law. Therefore, no such requirement has been added to this rule. The validity of millsites may, nevertheless, still be challenged based on the requirements in 30 U.S.C. 42.

One comment asked if paragraph (a)(3) meant that if mill sites are listed on a small miner certification, this would constitute a filing of a notice of intention to hold. The answer is yes, and this is further clarified in § 3833.1–7(c).

One comment asked whether paragraph (b) required that a reclamation plan be approved before the claimant can file the certification statement, whether a closure date is required under the certification, and whether a statement will have to be filed every year until closure. The comment also pointed out that notice-level reclamation work does not need to be approved by the authorized officer. Another comment questioned the procedure to be followed on lands where the surface is not managed by BLM. Unless only notice-level activities are being conducted on the mining claim, a reclamation plan is required to be approved before a certification statement can be filed. This paragraph has been amended to add "in consultation with" the authorized officer to cover notice-level operators who describe such reclamation plans in their notice, but are not required to have them approved. Such reclamation plans, whether a part of notice- or plan-level operations, are always required to be on file prior to any August 31 deadline. No closure date is required as a part of the certification statement, and such statement will have to be filed every year until closure. This paragraph also has been amended to clarify the process for claims for which the surface is not managed by BLM.

Two comments urged removal of paragraph (b), with one comment inquiring as to its statutory authority, its legal effect, and the effect of failure to follow it. It further questioned whether this amounted to paving miners for doing what they were already obligated to do under the law. Another comment questioned this paragraph as well. Section 10106 of the 1993 Act directs the Secretary to promulgate regulations implementing the maintenance and location fee requirements. This authority is applied here to exempt from the maintenance fee claims being reclaimed after mining. A valid mining claim need not be maintained in order for reclamation work to proceed. There is little incentive for claimants to maintain claims in which the minerals have been exhausted. It is in the Department's interest to encourage claimants to retain a mining claim until reclamation is complete. Excusing a miner from the maintenance fee during reclamation does not in any way release the miner from the obligation to reclaim, which remains as before. Release of the bond serves as incentive for reclamation. If the claimant is found to have filed a false certification, then appropriate action, including penalties under 18 U.S.C 1001, may be instituted. Any failure to reclaim will be dealt with under applicable regulations.

Paragraph (d) has been amended to make it clear that an agency other than the National Park Service may deny access to a claimant's mining claim. All such denials may be grounds for a waiver under this paragraph. A new subordinate paragraph (3) has been added for the purpose of clarity to provide that the certification filed under paragraph (d) may serve as notice of intention to hold under Section 314 of FLPMA.

Two comments stated that paragraph (e), dealing with deferments, is inconsistent with the maintenance fee statute, which requires payment of the fee at specified times. One comment also stated that the fee cannot be deferred if, as in the case of the non-small miner, no assessment work is required. The language in this paragraph is similar to language in the rental fee regulations. The plain language of the Act of August 10, 1993, states that the fee is to be paid in lieu of the assessment work when it is required. When the assessment work is deferred, the maintenance fee may also be deferred. When a deferment ends, for the period in which the assessment work requirement was replaced by the maintenance fee, the deferred maintenance fee must then be paid. One comment referred to this section as providing for granting a waiver, but this is not correct. It provides for a deferment of fees that will have to be paid at the termination of the deferment.

Two comments stated that paragraph (e) conflicts with the Interior Board of Land Appeals decision *Clay Worst*, 128 IBLA 165. This decision found that only those claimants with 10 or fewer claims can obtain a deferment of assessment work. That decision was based on the previous rule, implementing the rental fee requirements, which is being replaced by this rule. It was not the intent of the Department to limit deferments to small miners in the last rule and it is not the intent in this rule. Deferments under this paragraph may be obtained for any number of claims. The *Worst* decision, which is based on the old regulation, does not affect this final rule because this rule implements a new statute.

One comment stated that paragraph (e)(1)(ii), redesignated (e)(2) in the final rule, departed from current policy. This paragraph is basically the same as the paragraph that applied to deferments in the rental fee regulations. It has never been the policy of BLM for claims to be automatically forfeited if a deferment is denied and the August 31 deadline has passed. In the current regulations, as well as under this rule, a 30-day period from the receipt of a deferment petition denial is allowed before payment of the fee is due. Spurious filings merely to delay payment of the fee have not been and should not be a problem, because fee payment is only potentially delayed, but not excused, in the case of a deferment denial.

Regarding paragraph (f), one comment asked whether claims or sites under a mineral patent application for which mineral entry has not been allowed be forfeited if no maintenance fee payment or waiver certification is received. The answer is yes.

One comment requested clarification of paragraph (e)(1). Under this paragraph it is possible for a small miner who is exempt from payment of the $100 fee to have his or her assessment work deferred. A small miner who is also applying for a deferment should certify as part of the waiver statement due on August 31 that assessment work that would otherwise have been done within the subject assessment year will be done after the expiration of the deferment. This paragraph has been amended in the final rule to make this requirement clear.

43 CFR 3833.1–7

One comment asked whether a claimant who paid a rental fee by August 31, 1993, for the 1993–1994 assessment year must now do assessment work in the 1993–1994 assessment year to obtain a waiver and hold the claim for the 1994–1995 assessment year, and certify to such by August 31, 1994, in order to qualify for a small-miner waiver. The answer is yes, because if the requirement were interpreted otherwise, the one fee payment made in 1993 would hold the claim for 2 years rather than 1.

One comment stated that BLM's fee waivers for small miners are not noted on the land records. The comment noted that when the fee is paid, it is shown on the record, which therefore clearly shows good standing for the claim. It is true that the BLM will not formally note acceptance of the waiver application on the land records. The BLM does not take formal action to grant waivers, but anyone inspecting BLM records will see whether an abandoned and void decision was issued and therefore whether a waiver application was rejected. It is also not true that a record showing a fee payment means that the claim has definitely been deemed in good standing for another year. For instance, if the fee payment is by a check that is returned unpaid by the bank, such payment will be judged to not have occurred and the claims will be declared void if the payment deadline has already passed.

Paragraph (a) was amended to insert the word "filing" to make clear that what is described in the paragraph is a proper certification filing. However, this does not mean that the claimant will automatically receive a waiver; the certification filed is required to be consistent with the small miner's actual situation as of August 31, 1994, as determined by BLM.

Three comments asked for clarification of paragraph (a). A valid exemption application having been filed by August 31, 1993, does not guarantee that the small miner's claim maintenance fee will be waived for the 1994–1995 assessment year. This will only happen if all the same elements that existed in the 1993 filing exist on August 31, 1994, the most obvious being the same number of mining claims. Otherwise the claimant will have to file a new waiver statement by August 31, 1994, or at least a supplemental statement. However, claimants whose situations have not changed since the 1993 filing need not file another certification.

Paragraph (c) has been amended to make it clear that the assessment year beginning on September 1, 1994, is the year for which a claim is held when the small miner certifies to assessment work done in the 1993–1994 assessment year by August 31, 1994. Also, a sentence repeating information existing in other sections has been removed.

Paragraph (d)(3) has been amended to make it clear that, for the purposes of obtaining the small miner waiver, the claimant is required to certify that the assessment work has been performed or will be performed by the date the payment is due, which is August 31 for each year the Act of August 10, 1993, is in effect.

One comment correctly observed that no waiver can be granted until after August 31 because the Act requires that the small miner have 10 or fewer claims on that date.

One comment asked whether paragraph (a) was correct in allowing an exemption filed under the rental fee statute by August 31, 1993, certifying that assessment work has been done in the 1993–1994 assessment year, to constitute a proper filing for the waiver statement due on August 31, 1994, under the maintenance fee statute. The answer is yes. The rental fee statute required that claimants filing for the small miner exemption certify by August 31, 1993, that they would perform $100 worth of assessment work during the 1993–1994 assessment year. The maintenance fee statute requires that claimants filing for the small miner waiver certify by August 31, 1994, that they have performed the $100 worth of assessment work for the same 1993–1994 assessment year. Because in such a case the $100 worth of work had already been certified to under the old law, it was determined that the new law did not require a doubling of assessment work, but that the same $100 worth of work could be used. To require $200 worth of work in the same year would be in conflict with the Mining Law of 1872, which requires only $100. This situation came about because the two laws overlap for the 1993–1994 assessment year as to the assessment work requirement for qualified small miners. The old rental fee statute will expire in 1994, and there is no further overlap of laws. Therefore, a small miner who qualified as such in 1993 need not take any action on August 31, 1994, if his or her situation has not changed since August 31, 1993.

One comment requested that pursuant to paragraph (a) claimants in this category should make filings by means of a new "renewal" form to be created. This would be more complicated than the process envisioned in this paragraph of the proposed rule, because it would be duplicative. If a small miner could report no change from what was reported in the exemption filing completed by August 31, 1993, then there is no purpose in requiring the miner to make any sort of new filing by August 31, 1994, if he or she intends to obtain another waiver to hold the claim for the 1994–1995 assessment year. Under the proposed rule the claimant would not have to make a new filing. However, the situation may have changed since the claimant filed in 1993; for example, the claimant may now own seven claims instead of five. Such a claimant would need to make a new filing by August 31, 1994, to reflect the changes. This could be done on the new waiver form, which is not any more complicated than a "renewal" form would be. Because of this, a renewal form will not be created.

Two comments said that paragraph (a) needed clarification. The paragraph means that if a claimant properly filed a certification by August 31, 1993, under the rental fee requirements, stating that he or she would perform the necessary assessment work in the 1993–1994 assessment year to hold the claim for that same assessment year, and did subsequently perform the assessment work, then he or she need not file a waiver statement by August 31, 1994. This does not mean that the certification filed in 1993 automatically leads to a waiver to hold the claims for 1994–1995. The claimant's 1993 statement and BLM records as of August 31, 1994, would have to be found to support a waiver for one to be allowed. For instance, if a claimant had added claims since the 1993 filing and had more than 10 claims on August 31, 1994, he or she would not be granted a waiver on the basis of information submitted in 1993, which no longer accurately reflects the status of the claimant. Such a claimant would have to pay the fee.

Two comments stated that paragraph (c), which allows a waiver statement to serve as a notice of intention to hold,

where required, should specify the situation where such a filing is required. The primary case where this would apply would be as to mill and tunnel sites.

One comment stated correctly that paragraph (c) should refer to obtaining the small miner waiver for the assessment year "beginning" at noon on September 1, 1994, rather than "ending." This correction has been made in this final rule.

One comment asked about provisions for filing of a notice of intention to hold for mill sites and tunnel sites included in a small miner waiver. These provisions can be found in paragraph (c).

Regarding paragraph (d) one comment asked whether each miner in a group or organization had to file a certification statement. Each miner with an ownership interest in a claim is required to be identified and sign the certified statement as provided in paragraphs (d)(4) and (d)(5).

Two comments asked if the references in paragraph (d) to a "certified statement" means the statement is required to be notarized. The answer is no, and the phrase "certified statement" has been changed to "statement" or "waiver certification," as appropriate to the context, in the final rule.

One comment said that paragraph (d) should require evidence of actual work on a claim such as proof of a Notice or Plan of Operations as was required under the old rental fee statute. The requirement for a Plan or Notice was statutory under the rental fee regulations, while the maintenance fee statute only calls for submission of proof of annual assessment. Therefore, the Plan of Operations or Notice requirement was not included in this rule. The BLM will perform periodic inspections of mining claims in order to make certain that work is being performed on mining claims for which fees are waived.

One comment asked whether, pursuant to paragraph (d), a claimant who has one claim, and who is a member of a corporation that has nine claims, other members of which have other claims, can receive the small miner waiver. The answer depends upon whether the claimant is a "related party" to the corporation and other members of the corporation. A "related party" is defined in the Act as one who controls, is controlled by, or is under common control with, another. The Act goes on to provide that control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means. Whether a claimant is a related party for purposes of qualifying as a small miner will be determined on a case-by-case basis. Because this question has been raised in a public comment, BLM will consider a subsequent proposed rulemaking to provide interpretation of this provision.

One comment correctly observed that, under paragraph (d)(2), a claimant could file for the small miner waiver before August 31, and then relinquish any excess claims so as to have 10 or fewer claims by August 31, thereby meeting that requirement for the waiver.

One comment said that paragraph (d)(5) should require notarization of signatures on the small miner waiver statement. The reason given was that some claimants use fictitious names to increase acreage in association placer claims. Requiring notarization would cause far more difficulty for all concerned, with little or no benefit. Meeting the notarization requirement is especially inconvenient for multiple co-owners. In the event a claimant fraudulently inserts fictitious names as in the example above, the claim would be open to attack from rival claimants.

Two comments requested a clarification of paragraph (e)(2). The Soldiers' and Sailors' Relief Act allows mining claims held by persons on active military duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries, to be exempt from the assessment work requirement. Likewise, such claims will be exempt from the maintenance fee requirement. The official notice filed by a person that he or she has entered active duty in the military service should also include the scheduled date of discharge. Military personnel would be subject to all assessment work or fee requirements 6 months following discharge, unless proof of re-enlistment is submitted that includes a new discharge date. A person who has been on active duty since before August 30, 1994, is required to file notice of such active duty status in the assessment year he or she wishes the exemption to begin. Beginning September 1, 1994, any decision voiding a claim to which this exemption applies, for nonpayment of the maintenance fee, will be vacated. This provision has been added to paragraph (e)(2) in the final rule. Filing a notice of intention to hold is not necessary, because fee payments for mill and tunnel sites, for instance, would merely be exempted in this case. As long as a qualified claimant follows the requirements of this paragraph, the claim cannot be considered abandoned for failure to pay the maintenance fee. Section (e) has also been amended to make it clear that, for a claimant to qualify under this section, he or she must own the claim without any unqualified co-owners, and cannot be controlled by anyone who is unqualified under this section. Finally, for the purpose of clarity, the order of paragraphs (e)(1) and (e)(2) in the proposed rule has been reversed in the final rule.

One comment stated that paragraph (f) should be removed because it would allow claimants who cannot perform assessment work in National Parks, for example, also to avoid paying the maintenance fee. Because the assessment work restriction within National Parks does not automatically signify that a claimant has been denied all access to his or her mining claim(s), BLM has accepted this comment and paragraph (f) has been removed in the final rule. Claimants who hold mining claims within National Parks and who would otherwise file a notice of intention to hold must pay the maintenance fee to hold their claims unless they are denied all access to their mining claims by the National Park Service or they are qualified as a small miner. Claimants who have been denied all access to their mining claims by the National Park Service or other governmental agencies may seek relief from the maintenance fee under § 3833.1–6(d).

43 CFR 3833.1–8

This section is redesignated in this final rule as section 3833.1–1. The old § 3833.1–1 is being removed administratively as a part of this rule, as explained above.

Paragraph (d) has been amended to show that the Act of August 10, 1993, does not affect the assessment work requirements starting September 1, 1999, and that the first FLPMA filing not affected by the Act is the one due on December 30, 2000.

One comment asked if fees or charges should be returnable if the claims are still shown as active on BLM records but have been voided or abandoned by operation of law, but for which a decision has not yet been issued. The answer is yes, if for some reason payments are made on such claims.

Two comments asked what the term "docketed" in paragraph (a) means. This word and other terms of art have been removed and replaced with other terms to clarify the point at which service charges cannot be returned.

One comment asked if service charges for amended locations will also be

returnable under paragraph (b). The answer is yes.

One comment disagreed that paragraph (b) allows service charges to be returnable in such a case. Service charges must be returnable in this case because the charges were paid for a service that will not be performed. For instance, if a small miner submits the service charge with his or her annual assessment filing on a claim that is already abandoned and void by operation of law, the service that the charges are for (to process the annual filing submitted) will never be rendered.

One comment asked whether paragraph (c) should refer to the time of "submission" of fees rather than the time "fees were paid." The term "time of submission" is more precise and the final rule has been amended accordingly.

One comment said that paragraph (c) did not cover all instances for which fees may be refunded. This paragraph has been amended to add overpayments as a reason for refund.

One comment asked for a clarification of whether paragraph (d) means that BLM will only refund duplicate payments when requested to. The answer is yes, but the final rule regarding this process has been amended to give the claimant a choice between a refund or an application of the excess fees to a future year.

One comment said that paragraph (d) should not apply to maintenance fees, but instead a new paragraph should be added in which application of the duplicate fees to a future year would be automatic unless a refund is issued. This paragraph has been amended to require that claimants who overpay their fee be given the choice either to receive a refund or to apply the fees to a subsequent year. Claimants will be notified in every case, because they have a right to direct how their overpayment is to be treated, and must know how much they have already contributed to the next year's payment in order to adjust their payment for the next year.

One comment suggested that paragraph (d) should be reworded for clarity. This has been done in the final rule.

43 CFR 3833.2–3

Paragraph (e) has been amended to provide that fee payments under the Act of August 10, 1993, need only be made for new claims located on or before September 29, 1998. The time period that such a claim will be held in good standing by such a payment has also been clarified.

43 CFR 3833.2–6

One comment stated that the term "mineral entry" is inconsistent with terminology in 43 CFR 3851.5(a) and should be changed to reflect this. It is inappropriate to make this change because the term is used in this section as it is in 43 CFR subpart 3851.

One comment challenged the statutory authority for this section. The comment stated that allowance of mineral entry is only an early hurdle in the patent process, and a claim at that point remains unpatented and thus subject to the fee. The comment also stated that associated regulations that allow assessment work to be excused in such a case are similarly erroneous. There is no specific statutory authority for this section, but there are significant numbers of judicial decisions supporting it. The end of the obligation to file proof of performance of assessment work is a part of the recognition of mineral entry, which must be determined on a case-by-case basis. The similar treatment of the maintenance fee payment is also a recognition of this mineral entry.

Two comments asked for the definition of when mineral entry begins. One comment urged insertion of the definition into the rule. When mineral entry occurs must be determined on a case-by-case basis.

One comment said that this section should be reworded because a notice of intention to hold can no longer be filed on a mining claim. This section has been reworded in the final rule to reflect this.

43 CFR 3833.3

One comment stated that paragraph (c) in the proposed rule is misleading because it refers to transfers of interest "being effective" on the date of recordation with BLM and also refers to "BLM record title purposes," which it said implies that BLM records reflect the true state of legal title for mining claims. This paragraph has been amended in the final rule to make it clear that the recordation date of a transfer of interest is merely the effective date for BLM record purposes. The paragraph is further amended by removing the phrase "For BLM record title purposes" to eliminate this confusion.

Three comments asked for a clarification of paragraph (c). The paragraph means to say that a transfer is first officially shown on BLM records as of the date of recordation with BLM. The actual effective date of the transfer is determined by State law.

43 CFR 3833.4

Two comments stated that paragraph (a)(1)(i) does not make reference to annual filings as to mill sites. This inadvertent omission has been corrected in the final rule.

One comment said that paragraph (a)(3), which deals with failure to perform assessment work on or before the date of the filing of a waiver statement, cannot result in forfeiture of the claim because this is not allowed under the Mining Law. The comment further stated that retroactive forfeiture of a claim for failure to perform assessment work once the waiver has already been granted should not be allowed. This paragraph is only referring to situations where a claimant would file a false statement which says that assessment work had been performed when it had not. In such a case, upon investigation, the claims would be declared void for failure to pay the maintenance fee, given that an invalid waiver certification was filed.

One comment said that the current paragraph (b) had been incorrectly amended in previous rules so that complete cross references regarding the curability of the contents of a notice of intention to hold were omitted. The paragraph is amended by adding a cross reference to § 3833.2–5.

One comment said that paragraph (b) did not adequately explain that failure to file complete information under the referenced sections is not automatically fatal, but is curable by means of submittal of the information in response to a notice from the authorized officer asking for it. The paragraph clearly says that this failure is curable, and no amendment is considered necessary.

One comment said that paragraph (c) did not reflect the case law regarding on whom BLM must serve notice. It cited an Interior Board of Land Appeals (IBLA) decision to support its position. The IBLA decision in question directed BLM to look at assessment affidavits in order to help determine the last address of record for an owner. This paragraph, however, merely deals with determining who is the owner of a claim, not where he or she lives. Therefore, it does not run afoul of the cited decision of IBLA.

43 CFR 3833.5

One comment requested that a change be made to paragraph (d) to allow for an additional method of service within this subpart. This change cannot be made in the final rule because it was not proposed in the May 11, 1994, Federal Register publication. Substantive changes may not be made in regulations, absent emergency circumstances,

without providing opportunity for public comment on the proposed changes. 5 U.S.C. 553. The BLM will give consideration to this request to determine whether additional methods of service are warranted and should be adopted by future rulemaking.

43 CFR 3851.4

Two comments asked whether mill or tunnel sites should be added in the co-ownership provisions of this section. The answer is yes, and sites have been added to this section in this final rule to clarify the rights and responsibilities of co-owners of these sites.

One comment stated that paragraph (a) should clearly state that the year referred to means assessment year. This amendment has been made in the final rule.

One comment suggested that the phrase "ownership records" in paragraph (b) should be changed to "BLM records" to underscore that BLM is not the official repository of mining claim ownership records. The BLM does not consider itself the keeper of the definitive record of ownership, and this paragraph in the proposed rule is not intended to imply that it is.

One comment said that the phrase "record title" in paragraph (c) should be changed to "BLM records" in order to avoid suggesting that the BLM ownership records are the official legal title records. The paragraph has been amended to remove this misleading implication.

The principal authors of this final rule are Frank Bruno and Roger Haskins of the Division of Solid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The fee may represent an economic consideration for a small, marginal operation that does not qualify for an exemption under the rule. However, most small operations would qualify. A small entity that holds a valuable mining claim will not be deterred by the annual fee, and many of them will qualify for an exemption. Most marginal claims were already abandoned in 1993 upon promulgation of the regulations implementing the Act of October 5, 1992.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. The requirement that a modest fee be paid to hold or maintain an existing unpatented mining claim, mill or tunnel site constitutes a reasonable regulatory burden, and it will have no effect on a claimant's use of his or her claim or site as long as he or she complies with the requirement.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions for collection of information contained at 43 CFR Parts 3730, 3820, 3830, and 3850, and subpart 3809 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0104, 1004–0110, and 1004–0114. Information collections for Parts 3730, 3820, 3830, and 3850 were consolidated under clearance number 1004–0114 in the July 15, 1993, rule (58 FR 38186). As this rule removes obsolete or inoperative sections of Title 43, Code of Federal Regulations, and extends the information collection-related effect of the previously enacted Act of October 5, 1992, and implementing regulations published on July 15, 1993, this rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 3720

Coal, Mineral royalties, Mines, Public lands—mineral resources.

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3810

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3820

Mines, Monuments and memorials, National forests, National parks, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR 3830

Mineral royalties, Fees, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR 3850

Assessment work, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 15, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

Under the authority of the Act of August 11, 1993 (Pub. L. 103–66, 107 Stat. 312); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1457 and 1201); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 703(a) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C 1701 and 1740); and the Act of April 16, 1993 (107 Stat. 60); parts 3730, 3820, 3830, and 3850; and subpart 3809, Groups 3700 and 3800, subchapters A and C, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIALS UPON PUBLIC LANDS VALUABLE FOR COAL

1. Part 3720 is removed and reserved.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

2. The authority citation for part 3730 is revised to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 28f–k, 107 Stat. 405.

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General

3. Section 3730.0–1 is revised to read as follows:

§ 3730.0–1 Purpose; lands open.

(a) The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 (Act), is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(1) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or

(2) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit that has not been renewed more than once.

(b) Locations made under the Act on lands withdrawn or reserved for power development within the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands are also subject to the provisions of the Act of April 8, 1948 (62 Stat. 162). See subpart 3821 of this title.

4. Section 3730.0–3 is revised to read as follows:

§ 3730.0–3 Authority.

The authorities for the regulations in this part are the Act of August 11, 1955 (30 U.S.C. 621–625); § 314 of the Act of October 21, 1976 (43 U.S.C. 1744); 30 U.S.C. 28f–k, 107 Stat. 405.

5. Section 3730.0–9 is amended by revising paragraph (a) to read as follows:

§ 3730.0–9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will enable the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (30 U.S.C. 621–625), Section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), and the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

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Subpart 3734—Location and Assessment Work

6. Section 3734.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file all notices or certificates of location, amended notices or certificates, and transfers of interest, with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the applicable maintenance, location, and service fees required by subpart 3833 of this title. The notice, certificate, transfer, or amendment thereto shall be marked by the owner to indicate that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as required by § 3833.5(c). Failure to so mark the location certificate will delay the procedures to authorize mining under subpart 3736.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work if he or she qualifies as a small miner under § 3833.0–5(u) of this title or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or notice of intention to hold, pursuant to subpart 3833 of this title.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

7. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 447; 16 U.S.C. 347–354; 16 U.S.C. 460y *et seq.*; 16 U.S.C. 473, 478–482; 16 U.S.C. 1901, 1907; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 122, 161, 162; 30 U.S.C. 242; 31 U.S.C. 9701; 43 U.S.C. 2; 43 U.S.C. 154; 43 U.S.C. 299, 300; 43 U.S.C. 1201; 43 U.S.C. 1474; 43 U.S.C. 1701 *et seq.*; 50 U.S.C. Appendix 565; 62 Stat. 162; 100 Stat. 3457–3468; 107 Stat. 60; and 30 U.S.C. 28f–k, 107 Stat. 405.

Subpart 3809—Surface Management

8. Section 3809.0–3 is amended by adding new paragraph (e) to read as follows:

§ 3809.0–3 Authority.

* * * * *

(e) The Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8), established the King Range Conservation Area in California. The Secretary is required under these Acts to manage activities in this conservation area under the General Mining Law of 1872 in such a manner as to protect the scenic, scientific, and environmental values against undue impairment, and ensure against pollution of streams and waters.

9. Section 3809.0–5 is amended by adding new paragraph (*l*) to read as follows:

§ 3809.0–5 Definitions.

* * * * *

(l) *King Range Conservation Area* means the area designated pursuant to the Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8).

10. Section 3809.1–4 is amended by adding new paragraph (b)(6) to read as follows:

§ 3809.1–4 Plan of operations: When required.

* * * * *

(b) * * *

(6) The area designated as the King Range Conservation Area pursuant to 16 U.S.C. 460y *et seq.*, as amended by section 602 of the Federal Land Policy and Management Act of 1976.

* * * * *

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

10. The authority citation for Part 3810 is added to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3811—Lands Subject to Location and Purchase

11. Section 3811.2–2 is revised to read as follows:

§ 3811.2–2 Lands in national parks and monuments.

The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), effectively withdrew all National Parks and Monuments from location and entry under the General Mining Law of 1872.

as amended. Since September 28, 1976, all National Parks and Monuments and other units of the National Park System have been closed to the location of mining claims and sites under the General Mining Law of 1872, as amended. Valid existing rights are recognized, but access and permission to operate mining claims and sites within units of the National Park System are now governed by 36 CFR part 9.

12. Section 3811.2–3 is revised to read as follows:

§ 3811.2–3 Lands in Indian reservations.

All lands contained within the boundaries of an established Indian Reservation are withdrawn from all location, entry, and appropriation under the General Mining Law of 1872, as amended. All minerals on Indian Reservations may only be acquired by lease pursuant to the Act of May 11, 1938 (25 U.S.C. 396a), the Act of March 3, 1909 (25 U.S.C. 396), or the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). The regulations governing the mineral leasing of Indian lands are found in 25 CFR Chapter I, Subchapter L.

§ 3811.2–8 [Removed]

13. Section 3811.2–8 is removed.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

14. The authority citation for part 3820 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3821—O and C Lands

15. Section 3821.0–3 is revised to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948, (62 Stat. 162); Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744); and the Act of August 10, 1993 (30 U.S.C. 28f-k, 107 Stat. 405).

16. Section 3821.2 is revised to read as follows:

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file all notices or certificates of location, amended notices or certificates, and transfers of interest in the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and shall pay the applicable maintenance, location, and service fees required by subpart 3833 of this title. The notice or certificate of location, or amendment thereto, shall be marked by the owner as being filed under the Act of April 8, 1948, and, if located on powersite lands, also the Act of August 11, 1955, as prescribed by §§ 3734.1 and 3833.5 of this title.

16. Section 3821.3 is revised to read as follows:

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located on O and C lands shall perform and record proof of annual assessment work, or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

Subpart 3826—[Removed and Reserved]

17. Subpart 3826 is removed and reserved.

Subpart 3827—[Removed and Reserved],

18. Subpart 3827 is removed and reserved.

PART 3830—LOCATION OF MINING CLAIMS

19. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22 and 28; 43 U.S.C. 1201; 31 U.S.C. 9701; 18 U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 243; 50 U.S.C. Appendix 565; 107 Stat. 60; 107 Stat. 405.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites; Payment of Service Charges, Maintenance, and Location Fees

20. Section 3833.0–1 is amended by revising paragraph (c) to read as follows:

§ 3833.0–1 Purpose.

* * * * *

(c) The payment in the same office of an annual maintenance fee, if required, for each mining claim, mill site, or tunnel site held by the claimant;

* * * * *

21. Section 3833.0–3 is amended by revising the first sentence of paragraph (a), revising paragraphs (e) and (f), and adding new paragraphs (g) and (h) to read as follows:

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of the Federal Land Policy and Management Act (43 U.S.C. 1744), as amended by the Act of August 10, 1993 (30 U.S.C. 28f-k, 107 Stat. 405), require the recordation of unpatented mining claims, mill sites, and tunnel sites, and the filing of information concerning annual assessment work performed on unpatented mining claims in the proper BLM office within specified time periods. * * *

* * * * *

(e) Sections 10101–10106 of the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 405), require an annual maintenance fee of $100 to be paid to the proper State Office of the Bureau of Land Management for each non-waived mining claim, mill site, or tunnel site. With certain exceptions provided in § 3833.1–6, this fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a) of FLPMA. Failure to pay the fee within the time limits prescribed by the Act of August 10, 1993, constitutes a statutory abandonment and forfeiture of the non-waived mining claim, mill site, or tunnel site. Provisions relating to maintenance fees and waivers are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242) requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law. The Act of August 10, 1993, specifically states that the maintenance fee provision shall not apply to any oil shale claims for which a fee is required to be paid under Section 2511(e)(2) of the Energy Policy Act of 1992. The $550 fee requirement for oil shale claims remains in effect. The $550 fee is first payable on or before December 31, 1993, and on or before each December 31st thereafter.

(g) The Stockraising Homestead Act of December 29, 1916 (SRHA) (43 U.S.C. 299), as amended by the Act of April 16, 1993 (107 Stat. 60), provides that no person other than the surface owner may locate a mining claim on SRHA lands after October 13, 1993, until a notice of intent to locate has been filed with the proper BLM State Office and the surface owner is notified of the filing.

(1)(i) When a notice of intent to locate a mining claim has been properly filed by a mining claimant, no other person may, until 90 days after the date the notice of intent is filed:

(A) File such a notice with respect to any portions of the lands covered by the first notice;

(B) Explore for minerals or locate a mining claim on any portion of such lands; or

(C) File an application to acquire any interest in any portion of such lands pursuant to Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(ii) The 90-day exclusive right may be extended by filing a Plan of Operations pursuant to subpart 3809 of this title. The extension runs until the BLM has approved or denied the Plan of Operations.

(2) The mining claimant may not locate mining claims on the lands encompassed by a notice under the Act of April 16, 1993, until at least 30 days after he or she has properly notified the surface owner by registered or certified mail, return receipt requested.

(3) The Act of April 16, 1993, contains numerous other requirements prerequisite to a claimant engaging in mineral exploration and development activities on SRHA lands. These requirements are administered pursuant to subpart 3814 of this title.

(h) The Soldiers' and Sailors' Relief Act of 1940 (50 U.S.C. appendix 565) excuses performance of assessment work by military personnel while they are on active duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries. The procedures for obtaining a waiver from the performance of assessment work may be found in subpart 3851 of this title.

22. Section 3833.0–5 is amended by revising paragraphs (e), (g), (m), and (o), removing paragraphs (t) and (v), redesignating existing paragraphs (u) and (w) as paragraphs (t) and (u), and adding paragraphs (v), (w), (x), (y), (z), (aa), and (bb) to read as follows:

§ 3833.0–5 Definitions.

* * * * *

(e) *Owner or claimant* means the person who is, under State or Federal law, the holder of the right to sell or transfer all or any part of an unpatented mining claim, mill site, or tunnel site. The name of the owner and his or her current address shall be identified on all instruments required to be recorded or filed by the regulations in this subpart.

* * * * *

(g) *Proper BLM office* means the Bureau of Land Management State Office listed in § 1821.2–1(d) of this title having jurisdiction over the land in which the claims or sites are located. In Alaska, the Northern District Office's Records and Public Information Unit, located in Fairbanks, may also receive and record documents, filings, and fees for all mining claims, mill sites, and tunnel sites located in the State of Alaska.

* * * * *

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For purposes of complying with §§ 3833.1–2, 3833.1–3, 3833.1–5, 3833.1–6, 3833.1–7, or 3833.2, a filing or fee required by any of these sections is timely if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period, except as provided in § 1821.2–2(e) of this title if the last day falls on a day the office is closed.

* * * * *

(o) *Filing period* means the time period during which documents and fees are required to be provided to the proper BLM office. Except for filings and recordings required of a small miner qualifying for a waiver under § 3833.1–7 of this title, filings under FLPMA that would have been due on December 30, 1994, and each December 30 through and including December 30, 1999, are waived effective January 1, 1994, and so long thereafter as the Act of August 10, 1993, is in effect.

* * * * *

(v) *Maintenance fee* means the annual $100 payment required by the Act of August 10, 1993 (Pub.L. 103–66, 107 Stat. 312), to hold and maintain a mining claim, mill site, or tunnel site. The requirement to pay a maintenance fee does not apply to any claim located after September 29, 1998.

(w) *Location fee* means the one time $25 payment required by the Act of August 10, 1993, for all new mining claims and mill and tunnel sites located upon the public lands on or after August 11, 1993, and before September 30, 1998. The location fee shall be paid at the time the mining claim or site is recorded with the proper BLM office.

(x) *Related party* means:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or

(2) A person who controls, is controlled by, or is under common control with the claimant.

(y) *Control* means, as defined in the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(z) *Forfeiture* means the consequences of an act or failure to act that results in an unpatented mining claim, mill, or tunnel site being deemed to be by operation of law abandoned or null and void. The term has the same meaning whether it is used in the noun form or in the verb form "forfeit" or "forfeited."

(aa) *Returnable* means that a check or negotiable instrument, including a valid credit card order, is received by the authorized officer but not yet processed through the accounting system of the Bureau of Land Management, and can be returned to the originator without processing of a refund check through the United States Treasury pursuant to § 3833.1–1.

(bb) *Refundable* means that a check or negotiable instrument, including a valid credit card order, has been processed through the accounting system of the Bureau of Land Management, and cannot be returned to the originator without the processing of a refund check through the United States Treasury or the crediting to a credit card account pursuant to § 3833.1–1.

23. Section 3833.0–9 is amended by revising paragraph (a) to read as follows:

§ 3833.0–9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0114. The information will be used to enable BLM to record mining claims, mill sites, and tunnel sites, to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes and to determine which claims and sites their owner(s) wish to continue to hold under applicable Federal statutes. A response is required to obtain a benefit in accordance with Section 314 of FLPMA, as amended, the Act of April 16, 1993 (Public Law 103–23, 107 Stat. 60), and the Act of August 10, 1993 (Public Law 103–66, 30 U.S.C. 28f & 107 Stat. 405).

* * * * *

24. Section 3833.1–1 is revised to read as follows:

§ 3833.1–1 Refundability of service charges, location fees, rental and maintenance fees.

(a) Service charges submitted for new recordings under § 3833.1–2 are not returnable or refundable after the document has received the processing for which the service charges were paid.

(b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 and 3833.3 are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned by operation of law.

(c) Maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited.

(d) Maintenance fees, location fees, or service charges made in duplicate for the same claim or site or otherwise overpaid are returnable or refundable. The money will be returned or refunded to the party who submitted it. The authorized officer may apply the fee to a future year if so instructed by the payor.

(e) Voluntary actions such as relinquishment of claims or sites, or payment of maintenance fees by a qualified small miner, shall not be a qualifying reason for obtaining a refund of such fees previously paid.

25. Section 3833.1–2 is amended by adding paragraphs (c) and (d) to read as follows:

§ 3833.1–2 Recordation of mining claims, mill sites, and tunnel sites located after October 21, 1976.

* * * * *

(c)(1) Beginning on October 13, 1993, mining claims cannot be located on lands patented under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993 (107 Stat 60); until the claimant has first filed a notice of intent to locate with the proper BLM State Office and has served a copy of the notice upon the surface owner(s) of record, by registered or certified mail, return receipt requested. Such notice shall be in the form and contain the information required in paragraph (d) of this section.

(2) The claimant shall wait 30 days after such service before entering the lands to locate any mining claims on the Stockraising Homestead Act lands.

(3) The authorized officer will not record any mining claim located on lands patented under the Stockraising Homestead Act, as amended, unless the claimant has complied with the requirements of this section, and all certificates or notices of location will be returned to the claimant without further action.

(4) The surface owner of land patented under the Stockraising Homestead Act, as amended, is exempt from the requirements of this section.

(5) All mining claims located on Stockraising Homestead lands are subject to the requirements of the Act of April 16, 1993. These additional requirements are found in subpart 3814 of this title.

(d) A separate notice of intent shall be filed and recorded in the appropriate BLM State Office for each separate surface ownership in an individual State.

(1) Each notice of intent submitted shall be accompanied by evidence of title of the surface owner(s). Evidence of title shall be either a certificate of title or abstract of title certified by a person, association, or corporation authorized by State law to execute such a certificate within that State, and acceptable to the Bureau of Land Management.

(2) The notice of intent shall contain:

(i) The names(s), mailing address(es), and telephone number(s) of the person(s) filing the notice;

(ii) The names(s), mailing address(es), and telephone number(s) of the surface owner(s);

(iii) The legal description of the lands to which the notice applies, to the nearest 5-acre subdivision or lot;

(iv) The total number of acres under the specific notice of intent filed to the nearest whole acre;

(v) A brief description of the proposed mineral activities;

(vi) A map and legal description of the lands to be subject to mineral exploration, including access route(s);

(vii) The name, mailing address, and telephone number of the person managing such activities; and

(viii) A statement of the dates on which such activities will take place.

(3) The legal description shall be based on the public land survey or on such other description as is sufficient to permit the authorized officer accurately to record the notice on the BLM land status records (i.e., to the nearest 5-acre subdivision or lot).

(4) Upon acceptance of a notice of intent by the authorized officer, the notice of intent will be entered upon the official land status records of the Bureau of Land Management.

(5) The total acreage covered at any time by notices of intent filed by any person and by affiliates of such person may not exceed 6,400 acres of such lands in any one State and 1,280 acres of such lands nationwide for a single surface owner.

(6) If the surface owner(s) sells all or part of the surface during the authorized exploration period, the person who filed the notice of intent is not required to notify the new surface owner(s) prior to entry during the authorized exploration period.

26. Section 3833.1–3 is revised to read as follows:

§ 3833.1–3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance.

(a) *Payment and acceptance policy.* All service charges, maintenance fees, and location fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency, and shall be made payable to the Department of the Interior—Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management. A check or negotiable instrument, including credit cards submitted for payment of charges and/or fees, for which payment is not honored by the issuing authority, and such refusal is not an error of the issuing authority, will be deemed to be a nonpayment of the charges or fees for which the check or negotiable instrument, including a credit card order, was tendered. See § 3833.1–4 (f) and (g) for payments made by credit cards or from Declining Deposit Accounts.

(b) *Recordation of new mining claims, mill sites, or tunnel sites with the Bureau of Land Management.* (1) New location notices or certificates submitted for recording pursuant to § 3833.1–2 that are not accompanied by full payment of the maintenance and location fees required by § 3833.1–4 or 3833.1–5 will not be accepted, and the submittal will be returned without further action by the authorized officer. The claimant may resubmit the filings with the proper payment of service charges and fees within the same 90-day filing period referred to in § 3833.1–2(a).

(2) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for new location notices or certificates submitted for recording pursuant to § 3833.1–2 when the proper maintenance and location fees have been submitted. Such documents will be noted as being recorded on the date received provided that the claimant submits the proper service charge either within 30 days of receipt of a deficiency notice sent by the authorized officer, or on or before the 90th day of the filing period referred to in 3833.1–2(a), whichever date is later.

(3) If the proper service charges have not been tendered pursuant to paragraph (b)(2), and if the claimant has not provided written instructions regarding the application of the funds received with the original filing, the authorized officer will apply such funds and serialize the claims in the order received. All notices or certificates for which there are insufficient funds to

cover all service charges and maintenance and location fees will be returned to the claimant.

(c) *Mining claims, mill sites, and tunnel sites recorded and serialized by the Bureau of Land Management.* (1) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for documents and filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1. Such documents and filings will be noted as being recorded on the date initially received, provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge as required by this paragraph will cause filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1 to be rejected and returned to the claimant/owner. If a payment is received that partially covers the claims submitted, the payment shall be applied to mining claims and sites in ascending numerical order of serialization.

(2) If a claimant fails to submit the proper maintenance fees on or before each August 31, the authorized officer will apply the fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization, unless otherwise directed by the claimant. The authorized officer will note the deficient fees as being paid on the original date received, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer, if that much time remains before August 31. If there are less than 30 days before August 31, the correct fees shall be filed (see § 3833.0–5(m)) by such claimant on or before the August 31 deadline. Failure to submit the proper fees will cause the forfeiture of remaining claims or sites by the claimant/owner.

27. Section 3833.1–4 is amended by revising the section reading; redesignating existing paragraphs (b) through (f) as (c) through (g), respectively; revising redesignated paragraphs (f) and (g); and adding a new paragraph (b), to read as follows:

§ 3833.1–4 Service charges and location fees.

* * * * *

(b) Each notice or certificate of location of a mining claim, mill site, or tunnel site that is located on or after August 11, 1993, and before September 30, 1998, shall, when filed with BLM, be accompanied by a one time nonrefundable location fee of $25.

* * * * *

(f) The claimant/owner may authorize the BLM to charge payment of service charges, maintenance fees, and location fees to his or her credit card under § 3833.1–3(a) by transmitting a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization by telephone if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(g) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges, maintenance fees, and location fees. The authorized officer may deduct the necessary service charges and fees from or add overpayments to such account only at the direction of the claimant/owner.

28. Section 3833.1–5 is revised to read as follows:

§ 3833.1–5 Maintenance fees.

Except as provided in §§ 3833.0–3(f), 3833.1–6, and 3833.1–1 (d) and (e), each claimant shall pay a nonrefundable maintenance fee of $100 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Act of August 10, 1993, begin at 12 o'clock noon on September 1, 1994, and end at 12 o'clock noon on September 1, 1999.

(a)(1) The initial $100 nonrefundable maintenance fee for the assessment year in which the mining claim or site is located shall be paid for each mining claim, mill site, or tunnel site at the time of its filing with BLM pursuant to section 314(b) of FLPMA and § 3833.1–2. If such claims or sites are located prior to an August 31, and the notice of location is properly filed within the FLPMA time frame but after August 31, then the $100 fee that was due on August 31 for the succeeding assessment year shall be paid at the time of filing the location notice along with the initial $100 fee.

(2) The initial maintenance fee described in paragraph (1) is not subject to the waiver provisions contained in §§ 3833.1–6 and 3833.1–7.

(b) Under the Act of August 10, 1993, a nonrefundable maintenance fee of $100.00 for each mining claim, mill site, or tunnel site shall be paid annually on or before August 31 for the subsequent assessment year beginning at 12 o'clock noon on September 1 of that year. The first payment will be due on or before August 31, 1994, with payments due for each August 31 through August 31, 1998. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the maintenance fee is being paid.

(c) There will be no proration of rental or maintenance fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under the waiver provisions of §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental or maintenance fee.

(e) The owner of an oil shale placer claim shall pay the required $550 annual rental fee to the proper BLM State Office on or before each December 31.

(f) The payment of the required maintenance fee for a mining claim, mill site, or tunnel site satisfies the requirement to file an affidavit of assessment work or a notice of intention to hold pursuant to § 3833.2.

(g) If a waived mining claim or site is transferred in total or in part to a party not qualified for a waiver, the waiver is forfeited for the mining claim or site or portion of interest therein transferred to the unqualified party. The maintenance fee for the previously waived claim or site will be paid for the assessment year in which the transfer was effective under State law pursuant to § 3833.3. The applicable deadline is the August 31 on or immediately after which the transfer is effective under State law.

(h) The Secretary will adjust the location and maintenance fees every 5 years, based upon the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics, Department of Labor. The Secretary may adjust the location and maintenance fees sooner, if he deems it reasonable, based upon changes in the CPI.

(1) Public notice of any adjustment of maintenance or location fees will be provided by July 1 of the assessment year prior to the assessment year to which the adjustment becomes effective.

(2) Any such adjustment of maintenance or location fees to reflect changes in the CPI will be payable no later than the second August 31 following the July 1 by which the notice of the adjustment was given.

29. Section 3833.1–6 is revised to read as follows:

§ 3833.1–6 Maintenance fee waiver qualifications under the Act of August 10, 1993, and other exceptions—applicable from 12 o'clock noon on September 1, 1993, until 12 o'clock noon September 1, 1999.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to Section 314(a) of FLPMA and § 3833.2 in lieu of paying the maintenance fee. Assessment work shall conform to the requirements contained in subpart 3851 of this title.

(a) In order to qualify for a waiver of the maintenance fee requirements, a small miner shall meet all of the following conditions:

(1) The claimant and all related parties shall hold no more than 10 mining claims, mill sites, and tunnel sites, or any combination thereof, on Federal lands in the United States on the date the payment is due, which is each August 31. For purposes of determining the small miner waiver, oil shale claims shall not be counted toward the 10 claim limitation for the small miner waiver of the $100 maintenance fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the maintenance fee in addition to filing for a small miner waiver.

(2) All mining claims and sites held by a claimant and all related parties shall be counted toward the 10 claim and site limit.

(3) Mill and tunnel sites of a qualified small miner, if listed upon the exemption certificate along with the affected lode and placer mining claims, are waived from payment of the maintenance fee.

(b) Mining claims and sites that are undergoing final reclamation, as approved by the authorized officer pursuant to subparts 3802, 3809, or 3814 of this title, with no intent by the owner thereof to continue mining, milling, or processing operations upon or under the mining claims or sites, are excused from payment of the maintenance fees. The owner shall file a certified statement by August 31 in the proper BLM office attesting to the reclamation status of the affected mining claims and/or sites, with reference to a reclamation plan approved by the authorized officer for plan-level activities or submitted in consultation with the authorized officer for notice-level activities, and to his or her intent to place them into permanent closure. If the surface is managed by an entity other than BLM, the claimant shall submit evidence of a final reclamation plan that conforms to the requirements of the managing entity. A certified statement of such intent and reclamation shall be filed pursuant to § 3833.1–7. The number of mining claims or sites that may properly qualify for a reclamation waiver pursuant to this paragraph is not restricted to a 10-claim limit.

(c) Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), military personnel on active duty status may, under certain conditions, qualify for an exemption from the performance of assessment work and the payment of maintenance fees. See §§ 3833.1–7(e)(2) and 3851.6 of this title.

(d) Under the following circumstances, a waiver may be obtained from the payment of the maintenance fee for mining claims and sites:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to Sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906), or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites.

(2) The claimant shall file proof of the above conditions for exemption, attested to as a certified statement, pursuant to § 3833.1–7, with the proper BLM office by the August 31 immediately preceding the assessment year for which a waiver is sought.

(3) The certified statement required by paragraph (d)(2) of this section, serves as a notice of intention to hold as to mining claims and sites for which the exemption is sought. In such cases, the payment of the $5 service charge per claim or site is due upon filing the certification statement.

(e) Payment of the maintenance fee for mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28 (b)–(e) and subpart 3852 of this title may be deferred during the period for which the deferment is granted. Deferments are governed by the following rule. If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition.

(1) If the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year. At the expiration of the deferment all deferred fees shall be paid within 30 days of the end of the deferment, unless the claimant/owner qualifies as a small miner. If the claimant/owner qualifies as a small miner, all deferred assessment work shall be performed as provided in § 3852.5 of this title upon expiration of the deferment.

(2) If the petition for deferment is denied by the authorized officer, the maintenance fees shall be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the maintenance fees owed will result in the forfeiture of the claims contained within the petition.

(f) On mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed, the payment of the maintenance fee is excused for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title. However, no refund of previously deposited maintenance fees will be made to the mineral patent applicant.

30. Section 3833.1–7 is revised to read as follows:

§ 3833.1–7 Filing requirements for the maintenance fee waiver and other exceptions.

(a) If no change in status has occurred, a small miner exemption certification previously filed for the assessment year ending at noon on September 1, 1994, under the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374), and the pertinent regulations in effect on August 31, 1993, will be considered a proper certification filing for a waiver of payment of the maintenance fee due on August 31, 1994.

(b) The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver shall be filed with the proper BLM office pursuant to § 3833.2 and shall meet the requirements of § 3833.2–4.

(c) For mining claims and sites covered by a waiver, the filing of a waiver certification pursuant to any of paragraphs (a), (d), (e), or (f) of this section will satisfy the requirements for filing of a notice of intention to hold pursuant to § 3833.2–5, when such notice of intention to hold is otherwise required. In such a case the payment of the $5 service charge per claim/site for processing the notice of intention to hold is due upon filing of the waiver statement.

(d) In order to hold mining claims or sites for the assessment year beginning at 12 o'clock noon on September 1, 1994, each small miner shall file a

waiver certification on or before August 31, 1994. Each small miner shall file a waiver certification on or before August 31 each year thereafter to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through August 31, 1998. The small miner shall document, as provided in this paragraph (d), the claimed waiver for each assessment year a small miner's waiver is claimed, certified, and attested to under penalty of 18 U.S.C. 1001. The statement shall contain:

(1) The mining claim and site names and BLM serial numbers assigned to the mining claims and sites held by the small miner;

(2) A declaration by the claimant and all related parties that they own no more than 10 mining claims and sites in total nationwide on the date the waiver statement is due;

(3) A declaration that specifies that the assessment work requirements have been or will be completed by the date the payment is due, which is each August 31, for the assessment year just ending;

(4) The names and addresses of all owners maintaining an interest in the mining claims and sites; and

(5) The signatures of all the owners of the mining claims and sites for which a waiver is claimed.

(e) Pursuant to the Soldiers' and Sailors' Relief Act, and § 3851.6 of this title, a military person entering active service may file, or cause to be filed, in the proper BLM office, a notice of his or her entry into active military service.

(1) The filing of the notice excuses the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed after release from a military hospital, whichever is later. To be excused from paying the maintenance fee, the person cannot hold the subject claim or site with a related party, as defined in paragraph 3833.0–5(y), who does not also qualify under the Soldiers' and Sailors' Relief Act.

(2) The notice must be filed in the assessment year that the person entered active duty status, or if active duty began prior to August 30, 1994, the notice must be filed in the assessment year that he or she wishes the benefits provided in paragraph (e)(1) of this section to take effect. If the person previously filed a notice under the Soldiers' and Sailors' Relief Act to be excused from performing assessment work, and remains qualified under that Act, he or she will automatically be exempt from paying the maintenance fee.

(3) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year next following the assessment year during which the person was released from active duty or a military hospital, whichever is later.

(4) The notice shall be filed as a certified statement pursuant to paragraph (d) of this section, and shall list all mining claims and sites affected by claim/site name and BLM serial number.

31. Section 3833.2–3 is amended by revising the section heading and paragraphs (d) and (e) to read as follows:

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of August 10, 1993.

* * * * *

(d) The Act of August 10, 1993, does not affect the requirements to do assessment work in the assessment year beginning at 12 o'clock noon on September 1, 1999, or to make annual filings on or before December 30, 2000, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1998, and on or before September 29, 1998, and for which the required $100 maintenance fee was paid at the time of recording pursuant to § 314(b) of FLPMA and § 3833.1–2, payment of the maintenance fee holds the claims or sites through at least September 1, 1999.

32. Section 3833.2–6 is revised to read as follows:

§ 3833.2–6 When evidence or notice is not required.

Evidence of annual assessment work performed to hold a mining claim or a notice of intention to hold a mill site need not be filed on unpatented mining claims or mill sites if mineral entry under a mineral patent application has been allowed. The owner of that mining claim or mill site is exempt from the filing requirements of § 3833.2 and the payment of maintenance fees under § 3833.1–5 as of the date mineral entry is allowed.

33. Section 3833.3 is amended by adding paragraph (c) to read as follows:

§ 3833.3 Notice of transfer of interest.

* * * * *

(c) The filing of a transfer of interest, when properly executed and recorded under State law, is placed on the BLM record when it is filed with the proper BLM office. The transfer will be deemed to have taken place on its effective date under State law.

34. Section 3833.4 is amended by revising the heading and paragraphs (a) and (b), redesignating paragraphs (c) through (e) as (d) through (f), respectively, and adding paragraph (c), to read as follows:

§ 3833.4 Failure to file, or to pay maintenance or location fees.

(a)(1) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before the December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, shall conclusively constitute a forfeiture of the mining claim or site.

(2) Failure to record the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or failure to pay the maintenance or location fees required by §§ 3833.1–4, 3833.1–5, and 3833.1–7, or failure to file the documents required by § 3833.1–7 (b) through (d) within the time periods prescribed therein for claimants who also fail to pay the maintenance fee, shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site.

(3) Claimants who fail to pay the maintenance fee, but file a waiver certification under § 3833.1–7, shall perform the assessment work required by subpart 3851 of this title by the waiver statement filing deadline, or the mining claims under the invalid waiver certification will be conclusively deemed forfeited for failure to pay the maintenance fee on time.

(4) Failure to list the 10 or fewer mining claims and/or sites for which the fee is requested to be waived on the applicable certification document filed pursuant to 3833.1–6 or 3833.1–7 will result in the affected mining claims and/or sites being deemed abandoned by the owner or owners thereof.

(b) Failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7(d)–(f), 3833.2–4(a), 3833.2–4(b), 3833.2–5(b) and 3833.2–5(c), when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner.

(c) Failure to record a transfer of interest under § 3833.3 will result in the Bureau of Land Management refusing to recognize the interest acquired by the

transferee or to serve notice of any action, decision, or contest on the unrecorded owner.

PART 3850—ASSESSMENT WORK

35. The authority citation for part 3850 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28k; 50 U.S.C. Appendix 565; 107 Stat. 405.

Subpart 3851—Assessment Work: General

36. Section 3851.3 is amended by revising paragraph (c) to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

* * * * *

(c) The Act of August 10, 1993, with certain exceptions for small miners, temporarily suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $100 maintenance fee per mining claim in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 (30 U.S.C. 242) suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The maintenance fee requirements and waivers from the maintenance fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

37. Section 3851.4 is revised to read as follows:

§ 3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of maintenance fees.

(a) Upon the failure of any co-owner of a mining claim or mill or tunnel site to contribute the proper proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the maintenance fee required under §§ 3833.1–5 and 3833.1–6 of this title, may, at the expiration of the assessment year, give such delinquent co-owner personal notice of this failure in writing. Alternatively, this notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the claim by law passes to the co-owners who have made the expenditures or improvements.

(b) A claimant alleging ownership of a forfeited interest under paragraph (a) of this section who requests the authorized officer to change the ownership records of the affected mining claims or sites shall present the following:

(1) Statement of the publisher of the newspaper as to the facts of publication, giving the beginning and ending dates of publication, a printed copy of the notice published, and a statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute, or

(2) Evidence of personal notice of delinquency upon the delinquent party. If notice is effected by mail, the minimum sufficient evidence shall consist of a copy of the notice and a copy of the return receipt of the U.S. Postal Service evidencing receipt by the delinquent party of a registered or certified envelope containing the notice. If notice was made in person, an affidavit signed and dated on the date of notice will suffice as evidence of such notice; and

(3) In all cases, a signed and dated statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute.

(c) Upon determination by the authorized officer that paragraphs (a) and (b) of this section have been complied with, the BLM records of the mining claim shall be changed pursuant to § 3833.3 of this title. Such a change in ownership requires that the claimant submit the service charge required for a transfer of interest pursuant to § 3833.1–4 of this title.

(d) Active duty military personnel who give notice and comply with § 3851.6 are not subject to the provisions of this section.

38. Section 3851.5 is revised to read as follows:

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work and payment of maintenance fees is not required after the date that the mineral entry has been allowed.

(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work and payment of maintenance fees is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of maintenance fees, beginning in the next assessment year following the assessment year that the mineral entry was canceled.

39. Section 3851.6 is added to read as follows:

§ 3851.6 Assessment work not required for active duty military personnel.

Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), a person entering active military service is exempt from the performance of annual assessment work under this subpart for each assessment year in which the service person is on active duty.

(a) To claim the exemption, the person entering active military service shall file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service. The notice shall be filed in the assessment year that the person entered active duty status.

(b) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(c) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year beginning at least 6 months after the date the person was released from active duty or a military hospital, whichever is later.

(d) The notice shall be filed as a certified statement pursuant to section 3833.1–7 of this title, and shall list all mining claims and sites affected by claim name and BLM serial number.

Subpart 3852—Deferment of Assessment Work

40. Section 3852.2 is amended by revising the first and second sentences to read as follows:

§ 3852.2 Filing of petition for deferment, contents.

(a) In order to obtain a deferment, the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment. No particular form of petition is required, but the applicant shall attach to one copy thereof a copy of the notice to the public required by 30 U.S.C. 28e showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded. * * *

* * * * *

41. Section 3852.3 is revised to read as follows:

3852.3 Notice of action on petition to be recorded.

The claimant shall file or record, in the local recording office in which the notice of petition for deferment was filed or recorded, a copy of the order or decision of the BLM authorized officer disposing of the petition.

[FR Doc. 94–21388 Filed 8–29–94; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850

[WO-660-4191-02-24 1A; Circular No. 2657]

RIN 1004-AC17

Mining Claims; Maintenance and Location Fees; Lands Open to Location, National Parks, King Range National Conservation Area, Indian Reservations, Surface Management; Removal of Obsolete or Expired Regulations, Consolidation of Remaining Sections

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Omnibus Budget Reconciliation Act of 1993 (the Act) that require a $25 location fee and a $100 annual maintenance fee for each mining claim and site located and held under the general mining laws. The fee requirements remain in effect through 1998, and apply to the assessment years 1994–95 through 1998–99. The final rule establishes the procedures for paying and administering the required annual maintenance and location fees, puts into regulation the statute's mandatory payment deadlines and its mandatory provision that failure to pay the fees on time constitutes abandonment of the claim or site, amends the recording and assessment work regulations to conform to the requirements of the Act, and establishes procedures by which small miners may obtain a waiver from payment of the maintenance fee. The final rule also implements the new location and recording requirements for mining claims located on Stockraising Homestead Act lands. These requirements are contained in the Act of April 16, 1993 (107 Stat. 60). It also removes obsolete or expired provisions, and consolidates provisions that are still in force and effect in the regulations concerning location and entry of mining claims and sites on coal bearing lands, National Park System units, the King Range Conservation Area, and Indian reservations.

EFFECTIVE DATE: August 30, 1994.

ADDRESSES: Any suggestions or inquiries should be sent to: Director (660), Mail Stop 501, Bureau of Land Management, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Frank Bruno or Roger Haskins at (202) 452–0350.

SUPPLEMENTARY INFORMATION: A proposed rule amending certain sections of the regulations at 43 CFR parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850 was published in the **Federal Register** on May 11, 1994 (59 FR 24572). There were 25 comments received regarding the proposal. Six comments were received from Bureau of Land Management (BLM) State Offices, 4 comments were received from private attorneys, 3 comments were received from individuals not connected with the mining industry, 3 comments were received from mining claimants, 3 comments were received from mining industry organizations, 1 comment was received from an individual in a mining-related business, 1 comment was received from a county government, 1 comment was received from an environmental group, 1 comment was received from a mining company, 1 comment was received from a Forest Service employee, and 1 comment was received from an individual BLM employee.

The Department of the Interior, in accordance with 5 U.S.C. 553(d), for good cause finds that it would not be in the public interest to delay the effective date until 30 days after publication. The deadline for payment of the annual maintenance fee is August 31, 1994. The mining industry needs as much time as possible to comply with the rule, and the BLM State Offices will not be able to accept filing and payments, or to assist the public in other ways, until the rule is effective.

General Comments

The proposed rule contained several references to the Act of October 5, 1992, which established the mining claim rental fee that has been in effect since the date of its enactment and which will expire on September 30, 1994. For the sake of simplicity, and because (1) The maintenance fee essentially replaces the original rental fee, (2) the rental fee statute will expire on September 30, and (3) any remaining issues regarding the rental fee can be dealt with using the regulations that implemented the October 5, 1992, Act, which were codified in the 1993 Code of Federal Regulations (CFR), all references to the 1992 Act have been removed from this final rule, including references to rental fees.

The comments addressed all aspects of the proposed rule. They were all given careful consideration and are addressed in this preamble.

One comment asked whether the $10 service charge for recording notices of location was being eliminated. The answer is no, because it is required for cost recovery purposes. The service charge requirement is retained in § 3833.1–4(a).

One comment expressed uncertainty as to when the new maintenance fee was to be effective. The maintenance fee for existing claims is first due to be filed on or before August 31, 1994, to hold the claim for the 1994–1995 assessment year.

One comment stated that the maintenance fee should not be subject to increases tied to the consumer price index and that such increases would put the fee out of sight for small miners. The comment further stated that these increases should not apply to those holding 10 or fewer claims. The provision to adjust maintenance fees to reflect changes in the consumer price index is statutory and cannot be changed in this rule. However, it would not affect small miners who file a valid waiver certification statement. Such individuals would not have to pay the maintenance fee, but would continue to perform $100 worth of assessment work as required by the Mining Law of 1872.

One comment stated that this rule and other unspecified changes in the Mining Law were being done without congressional authorization and are putting the mining industry out of business. The rule is being promulgated and is explicitly required by Section 10106 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 407), as enacted by Congress. Despite the reduction in active mining claims on Federal lands since $100 fees were first required in the 1992–93 assessment year, there is no substantial evidence to suggest that the fee is driving the bona fide mining industry out of business.

One comment objected to the short notice given in the proposed rule on May 11, 1994, that assessment work to hold the claim for those claimants qualifying as small miners for the assessment year beginning on September 1, 1994, must be completed in the assessment year ending on that date. However, enactment of the Omnibus Budget Reconciliation Act on August 10, 1993, predated the beginning of the assessment year ending on September 1, 1994, and served as ample notice for those claimants seeking to qualify as small miners under the new legislation.

One comment objected to any change in the Mining Law. Since the Congress has amended the Mining Law to require a maintenance fee, no changes in the

rule are warranted as a result of this comment.

Two comments stated that references to the due date for payment of the initial maintenance fee, which is made at recordation of the notice of location and within 90 days after location, were ambiguous. The comment identified the problem as a possible conflict between the location date on the notice of location and the location date under State law. However, pursuant to 30 U.S.C. 28, the date of the location of the mining claim is fixed under State law, and that is the date used by BLM to determine the 90-day period under the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*).

One comment from a county government stated that the removal of the requirement to file assessment work with BLM for those who pay the maintenance fee will cause the same problems as those that occurred under the rental fee requirements imposed by the Interior Department and Related Agencies Appropriations Act of 1993. The comment stated that because the Federal requirement to record annual labor with BLM had been lifted, filings were not being made with county recorders, affecting the record title history as well as State tax collections. Filings may still be required under State law. If State law does not require filing with county recorders, then State law could be amended to remedy the problem. Also, miners may risk losing their claims to third parties if they do not record with county recorders, and are urged to comply with State and Federal mining laws.

One comment stated that there was some confusion with the term "record" as used in the proposed rule. The comment said that the term should be defined to apply only to county recordings and never to BLM "filings." The term "record" has been used to refer to certain BLM filings for many years. Any reference to BLM recordation in the regulations clearly refers only to BLM requirements for filings in the proper BLM office. It is inappropriate to provide for exclusive application of the term to county recordings.

One comment stated that a notarized signature from each owner on a new notice of location should be required for State and Federal tax purposes. The addition of this requirement would be of no value to BLM, because BLM is not the official repository of mining claim ownership records. The States should ensure that their laws are adequate to trace ownership for tax purposes.

One comment stated that the rule should require a notice of intention to hold to be filed in the local State jurisdiction in certain circumstances. No such requirements can be added to this rule, because the 1993 Act does not impose a filing requirement equivalent to the filing requirements in Section 314 of FLPMA. It is therefore up to the States to impose such requirements as long as the 1993 Act remains in effect.

One comment stated that the rule should require that relinquishments contain notarized signatures of every owner in order to protect all owners from having their interests voided without their consent. This is not necessary because relinquishments relate only to the claimant making the relinquishment, and only his or her interest would be dropped, not the interests of other claimants.

One comment stated that it is unclear who is required to submit changes of address to BLM and pay the service charges. It is the owner's responsibility, not a lessee's. The owner is also referred to as the mining claimant. A transferee could also be an owner or a claimant. However, while BLM does not adjudicate who pays the fee for a mining claim, it holds the mining claimant responsible if the fee is not paid.

One comment asked whether the purpose for filing changes of address as requested in the rule is to help ensure that claimants receive proper notice regarding their claims. The answer is yes.

One comment asked why the rental fee is now called the maintenance fee. The October 1992 statute used the term rental fee, and the August 1993 statute used the term maintenance fee. The second term more accurately reflects the nature of the fee, since it is not considered rent, a service charge, or a tax. It is a payment required to maintain the mining claim in good standing.

43 CFR 3833.0–3

One comment stated that it would not be proper to file a notice of intention to hold a mining claim pursuant to § 3833.0–3(a) if a waiver is filed. This is true. The waiver for a mining claim can only be allowed if assessment work is done.

One comment suggested a rewording of paragraph (g)(1)(i) for clarity. This modification has been made to make it clear that it is the mining claimant who files the notice of intent to locate a claim.

43 CFR 3833.0–5

One comment stated that paragraph (e), the definition of "owner or claimant," should not require the name and address of all owners on documents referred to in the subpart, but should only require the filer's name and address. This requirement exists largely to protect each claimant's interest in being served in the event of an appeal or other need for communication. Therefore, it will be retained.

Three comments asked whether paragraph (m), the definition of "file" or "filed," was intended to allow notices of location or certificates of location to be subject to the postmark rule. The answer is yes, and the paragraph has been further amended in the final rule to make it clear that, in addition, location notices and certificates of location also will be accepted if postmarked by the end of the 90-day filing period. In response to a comment, the paragraph now refers to the filing of a maintenance fee waiver certification statement rather than the filing of a maintenance fee waiver: the former is a more accurate term.

One comment asked whether paragraph (m) was intended to allow $100 fee and waiver filings to be accepted if postmarked by August 31 and received in the proper BLM office within 15 days of that date. The answer is yes.

Two comments said that new location notices should not be subject to the postmark rule pursuant to paragraph (m). All other filings are similarly subject to the postmark rule. The comments give no reason for location notices to be treated differently.

One comment questioned whether BLM has the authority to extend the postmark rule to filings under the Act of August 10, 1993, since the Act specifically states that annual fee filings must be made by each August 31. The best precedent for this is the longstanding administrative practice for annual filings under Section 314(a) of FLPMA. Section 314(a) states that annual filings shall be made prior to December 31 yearly. However, the postmark rule has been applied to these filings for years by regulation as a practical way of treating such filings received through the postal system, and it has been upheld by the Interior Board of Land Appeals. The same practical consideration applies here.

One comment asked whether paragraph (m) is in conflict with § 1821.2–2(f), which does not recognize the postmark rule except in certain instances. Section 1821.2–2(f) applies to the filing of applications only, and paragraph (m) applies to filing notices of locations and payment of fees. No conflict exists between the two sections.

One comment stated that paragraph (m) meant that if a claimant's maintenance fee filing was postmarked on August 16 or before that the claims

would be forfeited. This is not true. The filing can be postmarked any time on or before August 31, as long as it is received in the proper BLM office no later than 15 days after August 31.

One comment asked whether paragraph (m) was meant to allow postmarks that fall on holidays and weekends. Deadlines that fall on a day the BLM office is closed are carried over to the next working day.

One comment asked whether paragraph (m) was restricted to mailings postmarked by the U.S. Postal Service. This paragraph has been amended to include other mail delivery systems that are independent of the claimant and for which the date of filing with the system can be verified.

Paragraph (o)(1) is amended to state clearly that the FLPMA filing due on December 30, 1999, is the last FLPMA filing affected by the Act of August 10, 1993.

Paragraph (o)(2) is removed in the final rule because it duplicates § 3833.1–7(d). A comment received concerning the wording of this paragraph is therefore moot.

Paragraph (o)(3) is removed because it duplicates § 3833.1–5(b) as it is revised in this final rule. Thus, the concerns raised in two comments that referred to the conflicting wording of these sections have been addressed.

Because of the removal of paragraphs (o) (2) and (3), paragraph (o)(1) is merged into the introductory text of paragraph (o).

Paragraph (w) has been simplified to remove information provided elsewhere in the rule.

Paragraphs (bb) and (cc) are amended to reference § 3833.1–1, which is the final rule redesignation of § 3833.1–8 of the proposed rule.

One comment suggested that paragraph (cc) should provide that refunds of payments made by credit card will be made as a credit to the card account. This suggestion has been adopted in the final rule.

43 CFR 3833.1–1

Although it was not addressed in the proposed rule, the existing language of this section is removed in its entirety and replaced with § 3833.1–8 of the proposed rule. The old section is being removed administratively in this final rule because it deals with obsolete requirements. Because this amendment is an administrative action to remove obsolete provisions, it has been determined that it has no impacts on the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this amendment may take effect upon publication.

43 CFR 3833.1–2

In the proposed rule published on May 11, 1994, a paragraph (c) was added to § 3833.1–2 to establish a basic process for compliance with Public Law 103–23 of April 16, 1993. This Act (107 Stat. 60) amended the Stockraising Homestead Act of 1916 (43 U.S.C. 299) by establishing new mining claim location and surface operations requirements for lands patented under the Stockraising Homestead with a reservation of the mineral estate to the United States. The Act became effective on October 13, 1993. To implement the Act of April 16, 1993, the Department has begun formulating regulations on locating claims and obtaining permission for exploration and mining on lands patented under the Stockraising Homestead Act. These regulations will be proposed as additions to 43 CFR subpart 3814.

A Departmental review demonstrates a need to have a basic location, recording, and notification procedure put into place as soon as possible in order to avoid legal problems between surface owners, mining claimants, and the Department over rights of location and entry on Stockraising Homestead lands under the Act of April 16, 1993. Therefore, as a logical outgrowth of the language included in the proposed rule, a new paragraph (d) is added to section 3833.1–2 to explain more fully the basic procedural requirements for locating and entering mining claims on Stockraising Homestead Act lands. This language reiterates, to a large degree, the language of the statute.

One comment requested that paragraph (c)(3) of the proposed rule be reworded for clarity. The final rule has been amended to make it clear that mining claims located on lands patented under the Stockraising Homestead Act, as amended, will not be recorded unless the claimant complies with the requirements in § 3833.1–2.

43 CFR 3833.1–3

Paragraph (c)(3) has been removed because the information appears elsewhere in the section.

Two comments said that § 3833.1–3 was confusing. The statute establishes payment deadlines for some types of fees, but allows payment deficiencies in other types of fee situations to be curable. The comments suggested that this section be made uniformly curable or non-curable to promote ease of administration. This section was developed in an effort to strike a balance among ease of administration, public service, and consistency with the law. Because of the statutory nature of the maintenance fee, it is not possible to make nonpayment of that fee curable. The fact that this deadline is firm is not an adequate basis for making other fee payment deficiencies non-curable.

One comment said that § 3833.1–3 ought to allow the claimant a chance to choose which mining claims should have partial payments applied to them before BLM imposes its system for making this determination. This amendment has been added in this final rule.

One comment said that the proposed rule was not clear about the treatment of insufficient maintenance fees paid for new locations. The requirements for this situation are explained in paragraph (b)(1).

One comment stated that a phrase in paragraph (b)(2), which provides that new claims rejected for insufficient service charges will be returned to the claimant/owner unprocessed, should be replaced by language requiring that a rejection decision be sent after the claims are serialized (given BLM identification numbers). Claims for which service charges have not been paid cannot be serialized because the missing or insufficient service charges are supposed to pay for such processing. Therefore, absent service charges, there is no serialization, and thus no claims of record, and there cannot be a formal decision on the disposition of the claims.

One comment said that paragraph (b)(2) is too complicated and suggested that missing service charges be made a non-curable defect. Making this change would not remove any administrative costs and would create the possibility of rigid and unfair application. For instance, a claimant could file $250 to cover two claims, rather than the proper $270 (which includes two $10 service charges, two $100 maintenance fees, and two $25 location fees). Under the scenario envisioned in the comment, BLM would have to apply $135 to one claim and then have the expense of refunding $115 and returning the second claim or writing a decision if the maintenance fee deadline had passed. The BLM prefers to apply the $250 to each claim ($125 each), and call for the additional $20 in service charges to complete the recording process.

Pursuant to a comment, paragraph (b)(2) has been reworded to eliminate confusion as to which of two apparent deadlines for paying a service charge applies. New paragraph (b)(3) has been added in the final rule to address the consequences of partial payment of service charges.

One comment asked that the policy on treatment of payment of insufficient mandatory fees be clarified. (The comment referred to the required $100 maintenance and $25 location fees.) This policy will not be put in the rule, but will be included in the BLM Manual. When the payment submitted does not cover all of the fees due, the BLM will apply all fees sequentially beginning with the first numbered claim of that claimant and to as many thereafter as the paid funds allow. For instance, if a claimant submits $200 for two new locations, BLM would not consider this complete payment of maintenance fees for two claims, leaving the location fees and service charges unpaid for both, but would apply the payment entirely to the first claim before applying any money to the second. Thus, BLM would apply $125 ($100 for the maintenance fee and $25 for the location fee) initially toward the first claim. Because the remaining $75 would be insufficient to cover the mandatory fees on the second claim, the second claim would be voided for failure to pay the required fees. A portion of the remaining funds would then be applied toward the first claim for the $10 service charge. If the claimant submits other instructions on how to apply the fees, such instructions will be followed, if possible.

One comment asked whether paragraph (c)(2) meant to allow a claimant to choose which claims or sites will be dropped if the maintenance fee payment is not sufficient for all of their claims. The answer is yes. However, if the claimant does not notify BLM of the preference, then BLM will apply the fees to those claims in ascending numerical order of serialization.

One comment requested that cross references to §§ 3833.1–4 and 3833.1–5, provisions on service charges and maintenance fees, be added in paragraph (c)(2). This did not seem necessary, in part due to the physical proximity of the provisions.

One comment said that paragraph (c)(3) should be changed to remove the phrase "* * * existing recorded and serialized mining claims and sites * * *" and to substitute the phrase "* * * the list of claims submitted by the claimant * * *." This change has not been made, but rather, the paragraph has been removed from the final rule because it largely repeats provisions of paragraph (c)(2).

43 CFR 3833.1–4

One comment stated that paragraph (b) was unclear in its reference to "recording." This paragraph has been amended to make it clear that the reference is to recordation with BLM.

One comment said that the reference in paragraph (f) to facsimile authorizations may cause problems, because some have been misdirected in the past. A misdirected facsimile would not be considered a filing in the proper office; no filing or payment is complete or proper until it is received in the appropriate office.

One comment suggested that paragraph (g) should allow overpayments to be credited to declining deposit accounts. This amendment has been made to the final rule.

43 CFR 3833.1–5

The introduction to this section has been simplified to remove information that is provided elsewhere in the regulations. The sentence referring to the application of paid rental fees to the maintenance fee was removed, because it confused the two fees and erroneously applied the succeeding statutes. There is no possibility under either statute that the rental fees covering 1992–93 and 1993–94 could be applied to the maintenance fees covering assessment years beginning with 1994–95. Also, the reference to § 3833.1–8 has been changed to § 3833.1–1 because of a redesignation in the final rule.

Paragraph (h)(2)(i) is removed in the final rule because it contains information provided elsewhere in the regulations.

Three comments questioned whether it was correct to say that the assessment years covered under the Act of August 10, 1993, end on September 1, 1999. It is correct because a maintenance fee paid on or before August 31, 1998, will hold the claim through September 1, 1999.

One comment questioned whether this section allows claimants to have more than 10 claims waived. The answer is no. The language clearly refers to § 3833.1–6, which explains that the waiver can apply only to those with 10 claims or fewer.

One comment said that the reference in the first sentence of this section to § 3833.1–8 in the proposed rule was incorrect because § 3833.1–8 did not make an exception from payment of the maintenance fee. This first sentence refers to § 3833.1–8 in the proposed rule, redesignated as § 3833.1–1 in the final rule, because the section referred to provides for refunds in certain cases. Therefore, the reference is necessary because it shows that the maintenance fee is not always nonrefundable, not because the section referred to provides for some exception to the payment requirement.

One comment asked whether maintenance fees can be paid for years in the future despite the fact that assessment work always has had to be performed annually. The answer is yes because the maintenance fee has only to be paid on or before the August 31 deadlines, so that a claimant could pay $500 to hold a claim through September 1999. In the event, however, that the fee is adjusted pursuant to Section 10105(c) of the Act, reconciliation payments or refunds may be necessary. Assessment work requirements for small miners remain the same.

One comment stated that paragraph (a)(1) was unclear in its reference to the "time of recording." The final rule has been amended to make it clear that this refers to filing with BLM.

One comment said that it was incorrect for paragraph (a)(2) to allow no waiver for the initial claim maintenance fee due upon recordation of a new claim. The small miner waiver is a discretionary waiver. A waiver of the initial maintenance fee for small miners would be unnecessarily difficult to administer and impossible to apply equally to all miners. Varying filing requirements arise when miners perform assessment work at different times during the assessment year, and, in some instances, new locations could change the status of some small miners. As a matter of discretion, therefore, BLM will not allow a waiver for the initial maintenance fee required upon location of a new claim.

Several comments stated that paragraph (a)(1) does not account for the situation where the August 31 filing deadline falls within a new location's 90-day recording period. Language similar to that in the rental fee regulations has been added in paragraph (a) to cover this situation.

One comment requested that a requirement be added to paragraph (b) in which the claimant would indicate for which year a submitted maintenance fee is intended. This extra requirement was not added because in almost all cases it will be apparent which year the fee is intended.

One comment said that paragraph (g) should be removed because a small miner who transfers a claim has complied with the Act, but would have to sell the claim for $100 less to a non-small miner transferee. The comment stated that this would effectively take away the small miner's waiver. Such a result in claim transfer negotiations is not certain. In addition, this provision cannot be changed because the statute is very explicit that a claimant who has

more than 10 claims is required to pay the fee. The purchase price that is negotiated could be any amount decided by the two parties and by no means has to reflect the maintenance fee to be paid by the non-small miner transferee.

Two comments addressing paragraph (g) asked what would happen if only a percentage of the interest in a claim subject to a waiver, rather than the whole interest, was transferred to a party not entitled to a waiver. Because a response to this question depends on whether the parties are related, a general answer cannot be given here. However, the paragraph is amended to add the phrase "or in part."

Two comments asked what would happen if, unlike the situation described in paragraph (g), a waived mining claim was transferred to someone who qualified for a waiver. In such a case the claim would be waived as long as the new owner still qualified for the waiver with the addition of the new claim.

One comment stated that the reference in paragraph (g) to the "time of filing" the transfer of interest should be changed to the effective date under State law. This is correct and the amendment has been made in the final rule.

One comment stated that paragraph (g) should not allow payments after the applicable August 31 deadline in cases where claims are transferred to an entity not entitled to a waiver, because there is no statutory authority for such extensions. This is correct and the final rule has been amended accordingly.

One comment asked whether paragraph (h) will cause claimants who had already paid under the old rate to have to make additional partial payments. For purposes of clarification, paragraph (h)(2) has been amended in the final rule to eliminate the possibility of second payments being required in any given year as a result of an increase. If payments are made in advance of the year in which the fee is due, additional partial payments would be required if the fee is adjusted upward for that year.

One comment stated that the public notice provided for in paragraph (h)(1) should be done by letter to each individual miner. No decision has been made on how public notice under this paragraph will be accomplished, but it will be within the guidelines of the Administrative Procedure Act, which controls all such methods of official notification, and applicable case law.

One comment asked whether a possible upward adjustment of the maintenance fee per paragraph (h)(2) would mean that the small miner would have to do assessment work of an increased value as well. The answer is no. The amount of assessment work to be performed is established in the Mining Law of 1872. The maintenance fee is in lieu of assessment work required, the value of which has not been amended. No further clarification is necessary in the regulations on this point.

One comment questioned some of the references in paragraph (i). This paragraph has been removed in the final rule, because its contents are stated elsewhere in §§ 3833.1–5 and 3833.1–6.

43 CFR 3833.1–6

Paragraph (a)(1) was amended to make it clear that for purposes of obtaining the small miner waiver, the claimant is required to certify that he or she owns 10 claims or fewer on the date payment is due, which is August 31 of each year the Act of August 10, 1993, remains in effect.

Two comments challenged this section of the proposed rule, correctly observing that the Secretary is not required to offer a small miner waiver under the Act of August 10, 1993. One comment stated that the Secretary also had the choice of not offering the waiver or offering some other kind, such as a one-claim waiver. The comment went on to ask about the analysis that went into the decision to offer the 10-claim waiver and pointed out the administrative costs and loss of revenue to the government in offering it (the other comment was also concerned with administrative costs). It further asked what percentage of claims of record are owned by those with 10 or fewer claims. It also said that the National Performance Review requested by the President states that the Government should get a fair return for Federal resources and the waiver runs counter to this idea. There is nothing to suggest that Congress intended anything other than for the Secretary to decide whether to offer the 10-claim waiver as outlined in the Act, or not to offer it at all. The statute allows the Secretary discretion to offer the waiver to small miners, but defines small miners very specifically. Also, the Act essentially extends the previous rental fee statute, which offered a similar 10-claim exemption. Therefore, no other types of waivers such as a one-claim waiver were considered. The choice to offer the 10-claim waiver was made primarily because the fact that Congress included the waiver in the legislation, although within the Secretary's discretion, and included specific criteria for implementing it, suggests that Congress believed that allowing the waiver is appropriate in certain circumstances, which the statute proceeds to lay out in detail. It is true that there is an administrative cost and a loss of revenue to the Government because of the waiver. It was determined, however, that these costs are justified. The decision to offer the waiver does not conflict with the National Performance Review, because the Administration's position concerning a fair return for resources must be applied in light of the particular facts involved, including other Administration positions, such as the policy of helping small business. Additionally, it is the Administration's position that a royalty on production should be instituted in separate Mining Law reform legislation, which would also apply to small miners. This is where the return for resources is more fairly applied. Only approximately 10 percent of all active mining claims on Federal land are eligible to be excused from the maintenance fee, so the vast majority of claims will be subject to maintenance fees paid by the claimants.

One comment stated that paragraph (a) should not allow mill and tunnel sites to be waived if listed on a small miner waiver certification. Such sites will be eligible for waiver, because the Act of August 10, 1993, specifically allows a waiver of the maintenance fee required for mining claims and mill or tunnel sites.

One comment objected to paragraph (a)(1), which allows a small miner to pay the fee as well as file for a waiver if so desired. The comment stated that this is misleading because the fee is nonrefundable and the fee waiver would become moot. The comment suggested that in such a case as this the fee should be refunded if a small miner waiver is found to be valid. The purpose of this paragraph, which is similar to language which implemented the rental fee, is to make clear that there is no penalty for both paying the fee and filing the waiver. The BLM has had a policy of not offering refunds in cases such as this because of the significant costs associated with processing refunds, and because a decision to pay the fee and file the waiver is entirely within the discretion of the claimant. It has been determined that such costs go beyond basic public service and represent a burden on the taxpayer. However, the regulation provides at § 3833.1–1(d) that in such a case the claimant could apply the payment to a subsequent year if the most current claim fee is waived through the small miner certification process.

Two comments asked whether paragraph (a)(1) allows for claimants to pay the fee for some claims and get the waiver for some if they have 10 or fewer total. The answer is no because the

statute requires that if eligible claimants decide to apply for the small miner waiver they must do so for all their claims. This paragraph does allow for a claimant to both pay and file for a small miner waiver for all or some of his or her claims, but all of the claims count in deciding whether the claimant is qualified for the small miner waiver.

One comment stated that paragraph (a)(1) should provide that if only one co-owner has more than 10 claims that only his or her interest in the claims will be forfeited in the event of non-payment under § 3833.4. This depends on the relationship between the parties. If the co-owners are not related parties as defined in the law and this rule, the claim would be void as to the non-small miner co-owner only.

Regarding paragraph (a)(3) one comment asked how a claimant makes a certification for mill and tunnel sites when assessment work is not required for sites. Simply listing sites on the small miner waiver form will act as a notice of intention to hold and will suffice for certification.

One comment asked whether, pursuant to paragraph (a)(3), a small miner who owned only mill or tunnel sites could get a waiver. The answer is yes.

One comment said that paragraph (a)(3) should state that mill and tunnel sites are required to be active for the fee to be waived. The maintenance fee is collected only in lieu of the assessment work requirement, 30 U.S.C. 28–28e. No activity level is specified for mill sites in those sections of the Mining Law. Therefore, no such requirement has been added to this rule. The validity of millsites may, nevertheless, still be challenged based on the requirements in 30 U.S.C. 42.

One comment asked if paragraph (a)(3) meant that if mill sites are listed on a small miner certification, this would constitute a filing of a notice of intention to hold. The answer is yes, and this is further clarified in § 3833.1–7(c).

One comment asked whether paragraph (b) required that a reclamation plan be approved before the claimant can file the certification statement, whether a closure date is required under the certification, and whether a statement will have to be filed every year until closure. The comment also pointed out that notice-level reclamation work does not need to be approved by the authorized officer. Another comment questioned the procedure to be followed on lands where the surface is not managed by BLM. Unless only notice-level activities are being conducted on the mining claim, a reclamation plan is required to be approved before a certification statement can be filed. This paragraph has been amended to add "in consultation with" the authorized officer to cover notice-level operators who describe such reclamation plans in their notice, but are not required to have them approved. Such reclamation plans, whether a part of notice- or plan-level operations, are always required to be on file prior to any August 31 deadline. No closure date is required as a part of the certification statement, and such statement will have to be filed every year until closure. This paragraph also has been amended to clarify the process for claims for which the surface is not managed by BLM.

Two comments urged removal of paragraph (b), with one comment inquiring as to its statutory authority, its legal effect, and the effect of failure to follow it. It further questioned whether this amounted to paying miners for doing what they were already obligated to do under the law. Another comment questioned this paragraph as well. Section 10106 of the 1993 Act directs the Secretary to promulgate regulations implementing the maintenance and location fee requirements. This authority is applied here to exempt from the maintenance fee claims being reclaimed after mining. A valid mining claim need not be maintained in order for reclamation work to proceed. There is little incentive for claimants to maintain claims in which the minerals have been exhausted. It is in the Department's interest to encourage claimants to retain a mining claim until reclamation is complete. Excusing a miner from the maintenance fee during reclamation does not in any way release the miner from the obligation to reclaim, which remains as before. Release of the bond serves as incentive for reclamation. If the claimant is found to have filed a false certification, then appropriate action, including penalties under 18 U.S.C 1001, may be instituted. Any failure to reclaim will be dealt with under applicable regulations.

Paragraph (d) has been amended to make it clear that an agency other than the National Park Service may deny access to a claimant's mining claim. All such denials may be grounds for a waiver under this paragraph. A new subordinate paragraph (3) has been added for the purpose of clarity to provide that the certification filed under paragraph (d) may serve as notice of intention to hold under Section 314 of FLPMA.

Two comments stated that paragraph (e), dealing with deferments, is inconsistent with the maintenance fee statute, which requires payment of the fee at specified times. One comment also stated that the fee cannot be deferred if, as in the case of the non-small miner, no assessment work is required. The language in this paragraph is similar to language in the rental fee regulations. The plain language of the Act of August 10, 1993, states that the fee is to be paid in lieu of the assessment work when it is required. When the assessment work is deferred, the maintenance fee may also be deferred. When a deferment ends, for the period in which the assessment work requirement was replaced by the maintenance fee, the deferred maintenance fee must then be paid. One comment referred to this section as providing for granting a waiver, but this is not correct. It provides for a deferment of fees that will have to be paid at the termination of the deferment.

Two comments stated that paragraph (e) conflicts with the Interior Board of Land Appeals decision *Clay Worst*, 128 IBLA 165. This decision found that only those claimants with 10 or fewer claims can obtain a deferment of assessment work. That decision was based on the previous rule, implementing the rental fee requirements, which is being replaced by this rule. It was not the intent of the Department to limit deferments to small miners in the last rule and it is not the intent in this rule. Deferments under this paragraph may be obtained for any number of claims. The *Worst* decision, which is based on the old regulation, does not affect this final rule because this rule implements a new statute.

One comment stated that paragraph (e)(1)(ii), redesignated (e)(2) in the final rule, departed from current policy. This paragraph is basically the same as the paragraph that applied to deferments in the rental fee regulations. It has never been the policy of BLM for claims to be automatically forfeited if a deferment is denied and the August 31 deadline has passed. In the current regulations, as well as under this rule, a 30-day period from the receipt of a deferment petition denial is allowed before payment of the fee is due. Spurious filings merely to delay payment of the fee have not been and should not be a problem, because fee payment is only potentially delayed, but not excused, in the case of a deferment denial.

Regarding paragraph (f), one comment asked whether claims or sites under a mineral patent application for which mineral entry has not been allowed will be forfeited if no maintenance fee payment or waiver certification is received. The answer is yes.

One comment requested clarification of paragraph (e)(1). Under this paragraph it is possible for a small miner who is exempt from payment of the $100 fee to have his or her assessment work deferred. A small miner who is also applying for a deferment should certify as part of the waiver statement due on August 31 that assessment work that would otherwise have been done within the subject assessment year will be done after the expiration of the deferment. This paragraph has been amended in the final rule to make this requirement clear.

43 CFR 3833.1–7

One comment asked whether a claimant who paid a rental fee by August 31, 1993, for the 1993–1994 assessment year must now do assessment work in the 1993–1994 assessment year to obtain a waiver and hold the claim for the 1994–1995 assessment year, and certify to such by August 31, 1994, in order to qualify for a small-miner waiver. The answer is yes, because if the requirement were interpreted otherwise, the one fee payment made in 1993 would hold the claim for 2 years rather than 1.

One comment stated that BLM's fee waivers for small miners are not noted on the land records. The comment noted that when the fee is paid, it is shown on the record, which therefore clearly shows good standing for the claim. It is true that the BLM will not formally note acceptance of the waiver application on the land records. The BLM does not take formal action to grant waivers, but anyone inspecting BLM records will see whether an abandoned and void decision was issued and therefore whether a waiver application was rejected. It is also not true that a record showing a fee payment means that the claim has definitely been deemed in good standing for another year. For instance, if the fee payment is by a check that is returned unpaid by the bank, such payment will be judged to not have occurred and the claims will be declared void if the payment deadline has already passed.

Paragraph (a) was amended to insert the word "filing" to make clear that what is described in the paragraph is a proper certification filing. However, this does not mean that the claimant will automatically receive a waiver; the certification filed is required to be consistent with the small miner's actual situation as of August 31, 1994, as determined by BLM.

Three comments asked for clarification of paragraph (a). A valid exemption application having been filed by August 31, 1993, does not guarantee that the small miner's claim maintenance fee will be waived for the 1994–1995 assessment year. This will only happen if all the same elements that existed in the 1993 filing exist on August 31, 1994, the most obvious being the same number of mining claims. Otherwise the claimant will have to file a new waiver statement by August 31, 1994, or at least a supplemental statement. However, claimants whose situations have not changed since the 1993 filing need not file another certification.

Paragraph (c) has been amended to make it clear that the assessment year beginning on September 1, 1994, is the year for which a claim is held when the small miner certifies to assessment work done in the 1993–1994 assessment year by August 31, 1994. Also, a sentence repeating information existing in other sections has been removed.

Paragraph (d)(3) has been amended to make it clear that, for the purposes of obtaining the small miner waiver, the claimant is required to certify that the assessment work has been performed or will be performed by the date the payment is due, which is August 31 for each year the Act of August 10, 1993, is in effect.

One comment correctly observed that no waiver can be granted until after August 31 because the Act requires that the small miner have 10 or fewer claims on that date.

One comment asked whether paragraph (a) was correct in allowing an exemption filed under the rental fee statute by August 31, 1993, certifying that assessment work has been done in the 1993–1994 assessment year, to constitute a proper filing for the waiver statement due on August 31, 1994, under the maintenance fee statute. The answer is yes. The rental fee statute required that claimants filing for the small miner exemption certify by August 31, 1993, that they would perform $100 worth of assessment work during the 1993–1994 assessment year. The maintenance fee statute requires that claimants filing for the small miner waiver certify by August 31, 1994, that they have performed the $100 worth of assessment work for the same 1993–1994 assessment year. Because in such a case the $100 worth of work had already been certified to under the old law, it was determined that the new law did not require a doubling of assessment work, but that the same $100 worth of work could be used. To require $200 worth of work in the same year would be in conflict with the Mining Law of 1872, which requires only $100. This situation came about because the two laws overlap for the 1993–1994 assessment year as to the assessment work requirement for qualified small miners. The old rental fee statute will expire in 1994, and there is no further overlap of laws. Therefore, a small miner who qualified as such in 1993 need not take any action on August 31, 1994, if his or her situation has not changed since August 31, 1993.

One comment requested that pursuant to paragraph (a) claimants in this category should make filings by means of a new "renewal" form to be created. This would be more complicated than the process envisioned in this paragraph of the proposed rule, because it would be duplicative. If a small miner could report no change from what was reported in the exemption filing completed by August 31, 1993, then there is no purpose in requiring the miner to make any sort of new filing by August 31, 1994, if he or she intends to obtain another waiver to hold the claim for the 1994–1995 assessment year. Under the proposed rule the claimant would not have to make a new filing. However, the situation may have changed since the claimant filed in 1993; for example, the claimant may now own seven claims instead of five. Such a claimant would need to make a new filing by August 31, 1994, to reflect the changes. This could be done on the new waiver form, which is not any more complicated than a "renewal" form would be. Because of this, a renewal form will not be created.

Two comments said that paragraph (a) needed clarification. The paragraph means that if a claimant properly filed a certification by August 31, 1993, under the rental fee requirements, stating that he or she would perform the necessary assessment work in the 1993–1994 assessment year to hold the claim for that same assessment year, and did subsequently perform the assessment work, then he or she need not file a waiver statement by August 31, 1994. This does not mean that the certification filed in 1993 automatically leads to a waiver to hold the claims for 1994–1995. The claimant's 1993 statement and BLM records as of August 31, 1994, would have to be found to support a waiver for one to be allowed. For instance, if a claimant had added claims since the 1993 filing and had more than 10 claims on August 31, 1994, he or she would not be granted a waiver on the basis of information submitted in 1993, which no longer accurately reflects the status of the claimant. Such a claimant would have to pay the fee.

Two comments stated that paragraph (c), which allows a waiver statement to serve as a notice of intention to hold,

where required, should specify the situation where such a filing is required. The primary case where this would apply would be as to mill and tunnel sites.

One comment stated correctly that paragraph (c) should refer to obtaining the small miner waiver for the assessment year "beginning" at noon on September 1, 1994, rather than "ending." This correction has been made in this final rule.

One comment asked about provisions for filing of a notice of intention to hold for mill sites and tunnel sites included in a small miner waiver. These provisions can be found in paragraph (c).

Regarding paragraph (d) one comment asked whether each miner in a group or organization had to file a certification statement. Each miner with an ownership interest in a claim is required to be identified and sign the certified statement as provided in paragraphs (d)(4) and (d)(5).

Two comments asked if the references in paragraph (d) to a "certified statement" means the statement is required to be notarized. The answer is no, and the phrase "certified statement" has been changed to "statement" or "waiver certification," as appropriate to the context, in the final rule.

One comment said that paragraph (d) should require evidence of actual work on a claim such as proof of a Notice or Plan of Operations as was required under the old rental fee statute. The requirement for a Plan or Notice was statutory under the rental fee regulations, while the maintenance fee statute only calls for submission of proof of annual assessment. Therefore, the Plan of Operations or Notice requirement was not included in this rule. The BLM will perform periodic inspections of mining claims in order to make certain that work is being performed on mining claims for which fees are waived.

One comment asked whether, pursuant to paragraph (d), a claimant who has one claim, and who is a member of a corporation that has nine claims, other members of which have other claims, can receive the small miner waiver. The answer depends upon whether the claimant is a "related party" to the corporation and other members of the corporation. A "related party" is defined in the Act as one who controls, is controlled by, or is under common control with, another. The Act goes on to provide that control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means. Whether a claimant is a related party for purposes of qualifying as a small miner will be determined on a case-by-case basis. Because this question has been raised in a public comment, BLM will consider a subsequent proposed rulemaking to provide interpretation of this provision.

One comment correctly observed that, under paragraph (d)(2), a claimant could file for the small miner waiver before August 31, and then relinquish any excess claims so as to have 10 or fewer claims by August 31, thereby meeting that requirement for the waiver.

One comment said that paragraph (d)(5) should require notarization of signatures on the small miner waiver statement. The reason given was that some claimants use fictitious names to increase acreage in association placer claims. Requiring notarization would cause far more difficulty for all concerned, with little or no benefit. Meeting the notarization requirement is especially inconvenient for multiple co-owners. In the event a claimant fraudulently inserts fictitious names as in the example above, the claim would be open to attack from rival claimants.

Two comments requested a clarification of paragraph (e)(2). The Soldiers' and Sailors' Relief Act allows mining claims held by persons on active military duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries, to be exempt from the assessment work requirement. Likewise, such claims will be exempt from the maintenance fee requirement. The official notice filed by a person that he or she has entered active duty in the military service should also include the scheduled date of discharge. Military personnel would be subject to all assessment work or fee requirements 6 months following discharge, unless proof of re-enlistment is submitted that includes a new discharge date. A person who has been on active duty since before August 30, 1994, is required to file notice of such active duty status in the assessment year he or she wishes the exemption to begin. Beginning September 1, 1994, any decision voiding a claim to which this exemption applies, for nonpayment of the maintenance fee, will be vacated. This provision has been added to paragraph (e)(2) in the final rule. Filing a notice of intention to hold is not necessary, because fee payments for mill and tunnel sites, for instance, would merely be exempted in this case. As long as a qualified claimant follows the requirements of this paragraph, the claim cannot be considered abandoned for failure to pay the maintenance fee. Section (e) has also been amended to make it clear that, for a claimant to qualify under this section, he or she must own the claim without any unqualified co-owners, and cannot be controlled by anyone who is unqualified under this section. Finally, for the purpose of clarity, the order of paragraphs (e)(1) and (e)(2) in the proposed rule has been reversed in the final rule.

One comment stated that paragraph (f) should be removed because it would allow claimants who cannot perform assessment work in National Parks, for example, also to avoid paying the maintenance fee. Because the assessment work restriction within National Parks does not automatically signify that a claimant has been denied all access to his or her mining claim(s), BLM has accepted this comment and paragraph (f) has been removed in the final rule. Claimants who hold mining claims within National Parks and who would otherwise file a notice of intention to hold must pay the maintenance fee to hold their claims unless they are denied all access to their mining claims by the National Park Service or they are qualified as a small miner. Claimants who have been denied all access to their mining claims by the National Park Service or other governmental agencies may seek relief from the maintenance fee under § 3833.1–6(d).

43 CFR 3833.1–8

This section is redesignated in this final rule as section 3833.1–1. The old § 3833.1–1 is being removed administratively as a part of this rule, as explained above.

Paragraph (d) has been amended to show that the Act of August 10, 1993, does not affect the assessment work requirements starting September 1, 1999, and that the first FLPMA filing not affected by the Act is the one due on December 30, 2000.

One comment asked if fees or charges should be returnable if the claims are still shown as active on BLM records but have been voided or abandoned by operation of law, but for which a decision has not yet been issued. The answer is yes, if for some reason payments are made on such claims.

Two comments asked what the term "docketed" in paragraph (a) means. This word and other terms of art have been removed and replaced with other terms to clarify the point at which service charges cannot be returned.

One comment asked if service charges for amended locations will also be

returnable under paragraph (b). The answer is yes.

One comment disagreed that paragraph (b) allows service charges to be returnable in such a case. Service charges must be returnable in this case because the charges were paid for a service that will not be performed. For instance, if a small miner submits the service charge with his or her annual assessment filing on a claim that is already abandoned and void by operation of law, the service that the charges are for (to process the annual filing submitted) will never be rendered.

One comment asked whether paragraph (c) should refer to the time of "submission" of fees rather than the time "fees were paid." The term "time of submission" is more precise and the final rule has been amended accordingly.

One comment said that paragraph (c) did not cover all instances for which fees may be refunded. This paragraph has been amended to add overpayments as a reason for refund.

One comment asked for a clarification of whether paragraph (d) means that BLM will only refund duplicate payments when requested to. The answer is yes, but the final rule regarding this process has been amended to give the claimant a choice between a refund or an application of the excess fees to a future year.

One comment said that paragraph (d) should not apply to maintenance fees, but instead a new paragraph should be added in which application of the duplicate fees to a future year would be automatic unless a refund is issued. This paragraph has been amended to require that claimants who overpay their fee be given the choice either to receive a refund or to apply the fees to a subsequent year. Claimants will be notified in every case, because they have a right to direct how their overpayment is to be treated, and must know how much they have already contributed to the next year's payment in order to adjust their payment for the next year.

One comment suggested that paragraph (d) should be reworded for clarity. This has been done in the final rule.

43 CFR 3833.2–3

Paragraph (e) has been amended to provide that fee payments under the Act of August 10, 1993, need only be made for new claims located on or before September 29, 1998. The time period that such a claim will be held in good standing by such a payment has also been clarified.

43 CFR 3833.2–6

One comment stated that the term "mineral entry" is inconsistent with terminology in 43 CFR 3851.5(a) and should be changed to reflect this. It is inappropriate to make this change because the term is used in this section as it is in 43 CFR subpart 3851.

One comment challenged the statutory authority for this section. The comment stated that allowance of mineral entry is only an early hurdle in the patent process, and a claim at that point remains unpatented and thus subject to the fee. The comment also stated that associated regulations that allow assessment work to be excused in such a case are similarly erroneous. There is no specific statutory authority for this section, but there are significant numbers of judicial decisions supporting it. The end of the obligation to file proof of performance of assessment work is a part of the recognition of mineral entry, which must be determined on a case-by-case basis. The similar treatment of the maintenance fee payment is also a recognition of this mineral entry.

Two comments asked for the definition of when mineral entry begins. One comment urged insertion of the definition into the rule. When mineral entry occurs must be determined on a case-by-case basis.

One comment said that this section should be reworded because a notice of intention to hold can no longer be filed on a mining claim. This section has been reworded in the final rule to reflect this.

43 CFR 3833.3

One comment stated that paragraph (c) in the proposed rule is misleading because it refers to transfers of interest "being effective" on the date of recordation with BLM and also refers to "BLM record title purposes," which it said implies that BLM records reflect the true state of legal title for mining claims. This paragraph has been amended in the final rule to make it clear that the recordation date of a transfer of interest is merely the effective date for BLM record purposes. The paragraph is further amended by removing the phrase "For BLM record title purposes" to eliminate this confusion.

Three comments asked for a clarification of paragraph (c). The paragraph means to say that a transfer is first officially shown on BLM records as of the date of recordation with BLM. The actual effective date of the transfer is determined by State law.

43 CFR 3833.4

Two comments stated that paragraph (a)(1)(i) does not make reference to annual filings as to mill sites. This inadvertent omission has been corrected in the final rule.

One comment said that paragraph (a)(3), which deals with failure to perform assessment work on or before the date of the filing of a waiver statement, cannot result in forfeiture of the claim because this is not allowed under the Mining Law. The comment further stated that retroactive forfeiture of a claim for failure to perform assessment work once the waiver has already been granted should not be allowed. This paragraph is only referring to situations where a claimant would file a false statement which says that assessment work had been performed when it had not. In such a case, upon investigation, the claims would be declared void for failure to pay the maintenance fee, given that an invalid waiver certification was filed.

One comment said that the current paragraph (b) had been incorrectly amended in previous rules so that complete cross references regarding the curability of the contents of a notice of intention to hold were omitted. The paragraph is amended by adding a cross reference to § 3833.2–5.

One comment said that paragraph (b) did not adequately explain that failure to file complete information under the referenced sections is not automatically fatal, but is curable by means of submittal of the information in response to a notice from the authorized officer asking for it. The paragraph clearly says that this failure is curable, and no amendment is considered necessary.

One comment said that paragraph (c) did not reflect the case law regarding on whom BLM must serve notice. It cited an Interior Board of Land Appeals (IBLA) decision to support its position. The IBLA decision in question directed BLM to look at assessment affidavits in order to help determine the last address of record for an owner. This paragraph, however, merely deals with determining who is the owner of a claim, not where he or she lives. Therefore, it does not run afoul of the cited decision of IBLA.

43 CFR 3833.5

One comment requested that a change be made to paragraph (d) to allow for an additional method of service within this subpart. This change cannot be made in the final rule because it was not proposed in the May 11, 1994, **Federal Register** publication. Substantive changes may not be made in regulations, absent emergency circumstances,

without providing opportunity for public comment on the proposed changes. 5 U.S.C. 553. The BLM will give consideration to this request to determine whether additional methods of service are warranted and should be adopted by future rulemaking.

43 CFR 3851.4

Two comments asked whether mill or tunnel sites should be added in the co-ownership provisions of this section. The answer is yes, and sites have been added to this section in this final rule to clarify the rights and responsibilities of co-owners of these sites.

One comment stated that paragraph (a) should clearly state that the year referred to means assessment year. This amendment has been made in the final rule.

One comment suggested that the phrase "ownership records" in paragraph (b) should be changed to "BLM records" to underscore that BLM is not the official repository of mining claim ownership records. The BLM does not consider itself the keeper of the definitive record of ownership, and this paragraph in the proposed rule is not intended to imply that it is.

One comment said that the phrase "record title" in paragraph (c) should be changed to "BLM records" in order to avoid suggesting that the BLM ownership records are the official legal title records. The paragraph has been amended to remove this misleading implication.

The principal authors of this final rule are Frank Bruno and Roger Haskins of the Division of Solid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The fee may represent an economic consideration for a small, marginal operation that does not qualify for an exemption under the rule. However, most small operations would qualify. A small entity that holds a valuable mining claim will not be deterred by the annual fee, and many of them will qualify for an exemption. Most marginal claims were already abandoned in 1993 upon promulgation of the regulations implementing the Act of October 5, 1992.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. The requirement that a modest fee be paid to hold or maintain an existing unpatented mining claim, mill or tunnel site constitutes a reasonable regulatory burden, and it will have no effect on a claimant's use of his or her claim or site as long as he or she complies with the requirement.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions for collection of information contained at 43 CFR Parts 3730, 3820, 3830, and 3850, and subpart 3809 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0104, 1004–0110, and 1004–0114. Information collections for Parts 3730, 3820, 3830, and 3850 were consolidated under clearance number 1004–0114 in the July 15, 1993, rule (58 FR 38186). As this rule removes obsolete or inoperative sections of Title 43, Code of Federal Regulations, and extends the information collection-related effect of the previously enacted Act of October 5, 1992, and implementing regulations published on July 15, 1993, this rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 3720

Coal, Mineral royalties, Mines, Public lands—mineral resources.

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3810

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3820

Mines, Monuments and memorials, National forests, National parks, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR 3830

Mineral royalties, Fees, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR 3850

Assessment work, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 15, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

Under the authority of the Act of August 11, 1993 (Pub. L. 103–66, 107 Stat. 312); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1457 and 1201); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 703(a) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C 1701 and 1740); and the Act of April 16, 1993 (107 Stat. 60); parts 3730, 3820, 3830, and 3850, and subpart 3809, Groups 3700 and 3800, subchapters A and C, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIALS UPON PUBLIC LANDS VALUABLE FOR COAL

1. Part 3720 is removed and reserved.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

2. The authority citation for part 3730 is revised to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 28f–k, 107 Stat. 405.

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General

3. Section 3730.0–1 is revised to read as follows:

§ 3730.0–1 Purpose; lands open.

(a) The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 (Act), is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(1) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or

(2) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit that has not been renewed more than once.

(b) Locations made under the Act on lands withdrawn or reserved for power development within the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands are also subject to the provisions of the Act of April 8, 1948 (62 Stat. 162). See subpart 3821 of this title.

4. Section 3730.0–3 is revised to read as follows:

§ 3730.0–3 Authority.

The authorities for the regulations in this part are the Act of August 11, 1955 (30 U.S.C. 621–625); § 314 of the Act of October 21, 1976 (43 U.S.C. 1744); 30 U.S.C. 28f–k, 107 Stat. 405.

5. Section 3730.0–9 is amended by revising paragraph (a) to read as follows:

§ 3730.0–9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will enable the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (30 U.S.C. 621–625), Section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), and the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

* * * * *

Subpart 3734—Location and Assessment Work

6. Section 3734.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file all notices or certificates of location, amended notices or certificates, and transfers of interest, with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the applicable maintenance, location, and service fees required by subpart 3833 of this title. The notice, certificate, transfer, or amendment thereto shall be marked by the owner to indicate that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as required by § 3833.5(c). Failure to so mark the location certificate will delay the procedures to authorize mining under subpart 3736.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work if he or she qualifies as a small miner under § 3833.0–5(u) of this title or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or notice of intention to hold, pursuant to subpart 3833 of this title.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

7. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 447; 16 U.S.C. 347–354; 16 U.S.C. 460y *et seq.*; 16 U.S.C. 473, 478–482; 16 U.S.C. 1901, 1907; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 122, 161, 162; 30 U.S.C. 242; 31 U.S.C. 9701; 43 U.S.C. 2; 43 U.S.C. 154; 43 U.S.C. 299, 300; 43 U.S.C. 1201; 43 U.S.C. 1474; 43 U.S.C. 1701 *et seq.*; 50 U.S.C. Appendix 565; 62 Stat. 162; 100 Stat. 3457–3468; 107 Stat. 60; and 30 U.S.C. 28f–k, 107 Stat. 405.

Subpart 3809—Surface Management

8. Section 3809.0–3 is amended by adding new paragraph (e) to read as follows:

§ 3809.0–3 Authority.

* * * * *

(e) The Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8), established the King Range Conservation Area in California. The Secretary is required under these Acts to manage activities in this conservation area under the General Mining Law of 1872 in such a manner as to protect the scenic, scientific, and environmental values against undue impairment, and ensure against pollution of streams and waters.

9. Section 3809.0–5 is amended by adding new paragraph (*l*) to read as follows:

§ 3809.0–5 Definitions.

* * * * *

(l) *King Range Conservation Area* means the area designated pursuant to the Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8).

10. Section 3809.1–4 is amended by adding new paragraph (b)(6) to read as follows:

§ 3809.1–4 Plan of operations: When required.

* * * * *

(b) * * *

(6) The area designated as the King Range Conservation Area pursuant to 16 U.S.C. 460y *et seq.*, as amended by section 602 of the Federal Land Policy and Management Act of 1976.

* * * * *

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

10. The authority citation for Part 3810 is added to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3811—Lands Subject to Location and Purchase

11. Section 3811.2–2 is revised to read as follows:

§ 3811.2–2 Lands in national parks and monuments.

The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), effectively withdrew all National Parks and Monuments from location and entry under the General Mining Law of 1872,

as amended. Since September 28, 1976, all National Parks and Monuments and other units of the National Park System have been closed to the location of mining claims and sites under the General Mining Law of 1872, as amended. Valid existing rights are recognized, but access and permission to operate mining claims and sites within units of the National Park System are now governed by 36 CFR part 9.

12. Section 3811.2–3 is revised to read as follows:

§ 3811.2–3 Lands in Indian reservations.

All lands contained within the boundaries of an established Indian Reservation are withdrawn from all location, entry, and appropriation under the General Mining Law of 1872, as amended. All minerals on Indian Reservations may only be acquired by lease pursuant to the Act of May 11, 1938 (25 U.S.C. 396a), the Act of March 3, 1909 (25 U.S.C. 396), or the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). The regulations governing the mineral leasing of Indian lands are found in 25 CFR Chapter I Subchapter I.

§ 3811.2–8 [Removed]

13. Section 3811.2–8 is removed.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

13. The authority citation for part 3820 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3821—O and C Lands

14. Section 3821.0–3 is revised to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162); Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744); and the Act of August 10, 1993 (30 U.S.C. 28f-k, 107 Stat. 405).

15. Section 3821.2 is revised to read as follows:

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file all notices or certificates of location, amended notices or certificates, and transfers of interest in the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and shall pay the applicable maintenance, location, and service fees required by subpart 3833 of this title. The notice or certificate of location, or amendment thereto, shall be marked by the owner as being filed under the Act of April 8, 1948, and, if located on powersite lands, also the Act of August 11, 1955, as prescribed by §§ 3734.1 and 3833.5 of this title.

16. Section 3821.3 is revised to read as follows:

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located on O and C lands shall perform and record proof of annual assessment work, or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

Subpart 3826—[Removed and Reserved]

17. Subpart 3826 is removed and reserved.

Subpart 3827—[Removed and Reserved]

18. Subpart 3827 is removed and reserved.

PART 3830—LOCATION OF MINING CLAIMS

19. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22 and 28; 43 U.S.C. 1201; 31 U.S.C. 9701; 16 U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. Appendix 565; 107 Stat. 60; 107 Stat. 405.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites; Payment of Service Charges, Maintenance, and Location Fees

20. Section 3833.0–1 is amended by revising paragraph (c) to read as follows:

§ 3833.0–1 Purpose.

* * * * *

(c) The payment in the same office of an annual maintenance fee, if required, for each mining claim, mill site, or tunnel site held by the claimant;

* * * * *

21. Section 3833.0–3 is amended by revising the first sentence of paragraph (a), revising paragraphs (e) and (f), and adding new paragraphs (g) and (h) to read as follows:

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of the Federal Land Policy and Management Act (43 U.S.C. 1744), as amended by the Act of August 10, 1993 (30 U.S.C. 28f–k, 107 Stat. 405), require the recordation of unpatented mining claims, mill sites, and tunnel sites, and the filing of information concerning annual assessment work performed on unpatented mining claims in the proper BLM office within specified time periods. * * *

* * * * *

(e) Sections 10101–10106 of the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 405), require an annual maintenance fee of $100 to be paid to the proper State Office of the Bureau of Land Management for each non-waived mining claim, mill site, or tunnel site. With certain exceptions provided in § 3833.1–6, this fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a) of FLPMA. Failure to pay the fee within the time limits prescribed by the Act of August 10, 1993, constitutes a statutory abandonment and forfeiture of the non-waived mining claim, mill site, or tunnel site. Provisions relating to maintenance fees and waivers are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242) requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law. The Act of August 10, 1993, specifically states that the maintenance fee provision shall not apply to any oil shale claims for which a fee is required to be paid under Section 2511(e)(2) of the Energy Policy Act of 1992. The $550 fee requirement for oil shale claims remains in effect. The $550 fee is first payable on or before December 31, 1993, and on or before each December 31st thereafter.

(g) The Stockraising Homestead Act of December 29, 1916 (SRHA) (43 U.S.C. 299), as amended by the Act of April 16, 1993 (107 Stat. 60), provides that no person other than the surface owner may locate a mining claim on SRHA lands after October 13, 1993, until a notice of intent to locate has been filed with the proper BLM State Office and the surface owner is notified of the filing.

(1)(i) When a notice of intent to locate a mining claim has been properly filed by a mining claimant, no other person may, until 90 days after the date the notice of intent is filed:

(A) File such a notice with respect to any portions of the lands covered by the first notice;

(B) Explore for minerals or locate a mining claim on any portion of such lands; or

(C) File an application to acquire any interest in any portion of such lands pursuant to Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(ii) The 90-day exclusive right may be extended by filing a Plan of Operations pursuant to subpart 3809 of this title. The extension runs until the BLM has approved or denied the Plan of Operations.

(2) The mining claimant may not locate mining claims on the lands encompassed by a notice under the Act of April 16, 1993, until at least 30 days after he or she has properly notified the surface owner by registered or certified mail, return receipt requested.

(3) The Act of April 16, 1993, contains numerous other requirements prerequisite to a claimant engaging in mineral exploration and development activities on SRHA lands. These requirements are administered pursuant to subpart 3814 of this title.

(h) The Soldiers' and Sailors' Relief Act of 1940 (50 U.S.C. appendix 565) excuses performance of assessment work by military personnel while they are on active duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries. The procedures for obtaining a waiver from the performance of assessment work may be found in subpart 3851 of this title.

22. Section 3833.0–5 is amended by revising paragraphs (e), (g), (m), and (o), removing paragraphs (t) and (v), redesignating existing paragraphs (u) and (w) as paragraphs (t) and (u), and adding paragraphs (v), (w), (x), (y), (z), (aa), and (bb) to read as follows:

§ 3833.0–5 Definitions.

* * * * *

(e) *Owner or claimant* means the person who is, under State or Federal law, the holder of the right to sell or transfer all or any part of an unpatented mining claim, mill site, or tunnel site. The name of the owner and his or her current address shall be identified on all instruments required to be recorded or filed by the regulations in this subpart.

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(g) *Proper BLM office* means the Bureau of Land Management State Office listed in § 1821.2–1(d) of this title having jurisdiction over the land in which the claims or sites are located. In Alaska, the Northern District Office's Records and Public Information Unit, located in Fairbanks, may also receive and record documents, filings, and fees for all mining claims, mill sites, and tunnel sites located in the State of Alaska.

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(m) *File* or *filed* means being received and date stamped by the proper BLM office. For purposes of complying with §§ 3833.1–2, 3833.1–3, 3833.1–5, 3833.1–6, 3833.1–7, or 3833.2, a filing or fee required by any of these sections is timely if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period, except as provided in § 1821.2–2(e) of this title if the last day falls on a day the office is closed.

* * * * *

(o) *Filing period* means the time period during which documents and fees are required to be provided to the proper BLM office. Except for filings and recordings required of a small miner qualifying for a waiver under § 3833.1–7 of this title, filings under FLPMA that would have been due on December 30, 1994, and each December 30 through and including December 30, 1999, are waived effective January 1, 1994, and so long thereafter as the Act of August 10, 1993, is in effect.

* * * * *

(v) *Maintenance fee* means the annual $100 payment required by the Act of August 10, 1993 (Pub.L. 103–66, 107 Stat. 312), to hold and maintain a mining claim, mill site, or tunnel site. The requirement to pay a maintenance fee does not apply to any claim located after September 29, 1998.

(w) *Location fee* means the one time $25 payment required by the Act of August 10, 1993, for all new mining claims and mill and tunnel sites located upon the public lands on or after August 11, 1993, and before September 30, 1998. The location fee shall be paid at the time the mining claim or site is recorded with the proper BLM office.

(x) *Related party* means:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or

(2) A person who controls, is controlled by, or is under common control with the claimant.

(y) *Control* means, as defined in the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(z) *Forfeiture* means the consequences of an act or failure to act that results in an unpatented mining claim, mill, or tunnel site being deemed to be by operation of law abandoned or null and void. The term has the same meaning whether it is used in the noun form or in the verb form "forfeit" or "forfeited."

(aa) *Returnable* means that a check or negotiable instrument, including a valid credit card order, is received by the authorized officer but not yet processed through the accounting system of the Bureau of Land Management, and can be returned to the originator without processing of a refund check through the United States Treasury pursuant to § 3833.1–1.

(bb) *Refundable* means that a check or negotiable instrument, including a valid credit card order, has been processed through the accounting system of the Bureau of Land Management, and cannot be returned to the originator without the processing of a refund check through the United States Treasury or the crediting to a credit card account pursuant to § 3833.1–1.

23. Section 3833.0–9 is amended by revising paragraph (a) to read as follows:

§ 3833.0–9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0114. The information will be used to enable BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites their owner(s) wish to continue to hold under applicable Federal statute. A response is required to obtain a benefit in accordance with Section 314 of FLPMA, as amended, the Act of April 16, 1993 (Public Law 103–23, 107 Stat. 60), and the Act of August 10, 1993 (Public Law 103–66, 30 U.S.C. 28f–k, 107 Stat. 405).

* * * * *

24. Section 3833.1–1 is revised to read as follows:

§ 3833.1–1 Refundability of service charges, location fees, rental and maintenance fees.

(a) Service charges submitted for new recordings under § 3833.1–2 are not returnable or refundable after the document has received the processing for which the service charges were paid.

(b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 and 3833.3 are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned by operation of law.

(c) Maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited.

(d) Maintenance fees, location fees, or service charges made in duplicate for the same claim or site or otherwise overpaid are returnable or refundable. The money will be returned or refunded to the party who submitted it. The authorized officer may apply the fee to a future year if so instructed by the payor.

(e) Voluntary actions such as relinquishment of claims or sites, or payment of maintenance fees by a qualified small miner, shall not be a qualifying reason for obtaining a refund of such fees previously paid.

25. Section 3833.1–2 is amended by adding paragraphs (c) and (d) to read as follows:

§ 3833.1–2 Recordation of mining claims, mill sites, and tunnel sites located after October 21, 1976.

* * * * *

(c)(1) Beginning on October 13, 1993, mining claims cannot be located on lands patented under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993 (107 Stat 60); until the claimant has first filed a notice of intent to locate with the proper BLM State Office and has served a copy of the notice upon the surface owner(s) of record, by registered or certified mail, return receipt requested. Such notice shall be in the form and contain the information required in paragraph (d) of this section.

(2) The claimant shall wait 30 days after such service before entering the lands to locate any mining claims on the Stockraising Homestead Act lands.

(3) The authorized officer will not record any mining claim located on lands patented under the Stockraising Homestead Act, as amended, unless the claimant has complied with the requirements of this section, and all certificates or notices of location will be returned to the claimant without further action.

(4) The surface owner of land patented under the Stockraising Homestead Act, as amended, is exempt from the requirements of this section.

(5) All mining claims located on Stockraising Homestead lands are subject to the requirements of the Act of April 16, 1993. These additional requirements are found in subpart 3814 of this title.

(d) A separate notice of intent shall be filed and recorded in the appropriate BLM State Office for each separate surface ownership in an individual State.

(1) Each notice of intent submitted shall be accompanied by evidence of title of the surface owner(s). Evidence of title shall be either a certificate of title or abstract of title certified by a person, association, or corporation authorized by State law to execute such a certificate within that State, and acceptable to the Bureau of Land Management.

(2) The notice of intent shall contain:

(i) The names(s), mailing address(es), and telephone number(s) of the person(s) filing the notice;

(ii) The names(s), mailing address(es), and telephone number(s) of the surface owner(s);

(iii) The legal description of the lands to which the notice applies, to the nearest 5-acre subdivision or lot;

(iv) The total number of acres under the specific notice of intent filed to the nearest whole acre;

(v) A brief description of the proposed mineral activities;

(vi) A map and legal description of the lands to be subject to mineral exploration, including access route(s);

(vii) The name, mailing address, and telephone number of the person managing such activities; and

(viii) A statement of the dates on which such activities will take place.

(3) The legal description shall be based on the public land survey or on such other description as is sufficient to permit the authorized officer accurately to record the notice on the BLM land status records (i.e., to the nearest 5-acre subdivision or lot).

(4) Upon acceptance of a notice of intent by the authorized officer, the notice of intent will be entered upon the official land status records of the Bureau of Land Management.

(5) The total acreage covered at any time by notices of intent filed by any person and by affiliates of such person may not exceed 6,400 acres of such lands in any one State and 1,280 acres of such lands nationwide for a single surface owner.

(6) If the surface owner(s) sells all or part of the surface during the authorized exploration period, the person who filed the notice of intent is not required to notify the new surface owner(s) prior to entry during the authorized exploration period.

26. Section 3833.1–3 is revised to read as follows:

§ 3833.1–3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance.

(a) *Payment and acceptance policy.* All service charges, maintenance fees, and location fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency, and shall be made payable to the Department of the Interior—Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management. A check or negotiable instrument, including credit cards submitted for payment of charges and/or fees, for which payment is not honored by the issuing authority, and such refusal is not an error of the issuing authority, will be deemed to be a nonpayment of the charges or fees for which the check or negotiable instrument, including a credit card order, was tendered. See § 3833.1–4 (f) and (g) for payments made by credit cards or from Declining Deposit Accounts.

(b) *Recordation of new mining claims, mill sites, or tunnel sites with the Bureau of Land Management.* (1) New location notices or certificates submitted for recording pursuant to § 3833.1–2 that are not accompanied by full payment of the maintenance and location fees required by § 3833.1–4 or 3833.1–5 will not be accepted, and the submittal will be returned without further action by the authorized officer. The claimant may resubmit the filings with the proper payment of service charges and fees within the same 90-day filing period referred to in § 3833.1–2(a).

(2) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for new location notices or certificates submitted for recording pursuant to § 3833.1–2 when the proper maintenance and location fees have been submitted. Such documents will be noted as being recorded on the date received provided that the claimant submits the proper service charge either within 30 days of receipt of a deficiency notice sent by the authorized officer, or on or before the 90th day of the filing period referred to in 3833.1–2(a), whichever date is later.

(3) If the proper service charges have not been tendered pursuant to paragraph (b)(2), and if the claimant has not provided written instructions regarding the application of the funds received with the original filing, the authorized officer will apply such funds and serialize the claims in the order received. All notices or certificates for which there are insufficient funds to

cover all service charges and maintenance and location fees will be returned to the claimant.

(c) *Mining claims, mill sites, and tunnel sites recorded and serialized by the Bureau of Land Management.* (1) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for documents and filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1. Such documents and filings will be noted as being recorded on the date initially received, provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge as required by this paragraph will cause filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1 to be rejected and returned to the claimant/owner. If a payment is received that partially covers the claims submitted, the payment shall be applied to mining claims and sites in ascending numerical order of serialization.

(2) If a claimant fails to submit the proper maintenance fees on or before each August 31, the authorized officer will apply the fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization, unless otherwise directed by the claimant. The authorized officer will note the deficient fees as being paid on the original date received, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer, if that much time remains before August 31. If there are less than 30 days before August 31, the correct fees shall be filed (see § 3833.0–5(m)) by such claimant on or before the August 31 deadline. Failure to submit the proper fees will cause the forfeiture of remaining claims or sites by the claimant/owner.

27. Section 3833.1–4 is amended by revising the section reading; redesignating existing paragraphs (b) through (f) as (c) through (g), respectively; revising redesignated paragraphs (f) and (g); and adding a new paragraph (b), to read as follows:

§ 3833.1–4 Service charges and location fees.

* * * * *

(b) Each notice or certificate of location of a mining claim, mill site, or tunnel site that is located on or after August 11, 1993, and before September 30, 1998, shall, when filed with BLM, be accompanied by a one time nonrefundable location fee of $25.

* * * * *

(f) The claimant/owner may authorize the BLM to charge payment of service charges, maintenance fees, and location fees to his or her credit card under § 3833.1–3(a) by transmitting a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization by telephone if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(g) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges, maintenance fees, and location fees. The authorized officer may deduct the necessary service charges and fees from or add overpayments to such account only at the direction of the claimant/owner.

28. Section 3833.1–5 is revised to read as follows:

§ 3833.1–5 Maintenance fees.

Except as provided in §§ 3833.0–3(f), 3833.1–6, and 3833.1–1 (d) and (e), each claimant shall pay a nonrefundable maintenance fee of $100 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Act of August 10, 1993, begin at 12 o'clock noon on September 1, 1994, and end at 12 o'clock noon on September 1, 1999.

(a)(1) The initial $100 nonrefundable maintenance fee for the assessment year in which the mining claim or site is located shall be paid for each mining claim, mill site, or tunnel site at the time of its filing with BLM pursuant to section 314(b) of FLPMA and § 3833.1–2. If such claims or sites are located prior to an August 31, and the notice of location is properly filed within the FLPMA time frame but after August 31, then the $100 fee that was due on August 31 for the succeeding assessment year shall be paid at the time of filing the location notice along with the initial $100 fee.

(2) The initial maintenance fee described in paragraph (1) is not subject to the waiver provisions contained in §§ 3833.1–6 and 3833.1–7.

(b) Under the Act of August 10, 1993, a nonrefundable maintenance fee of $100.00 for each mining claim, mill site, or tunnel site shall be paid annually on or before August 31 for the subsequent assessment year beginning at 12 o'clock noon on September 1 of that year. The first payment will be due on or before August 31, 1994, with payments due for each August 31 through August 31, 1998. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the maintenance fee is being paid.

(c) There will be no proration of rental or maintenance fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under the waiver provisions of §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental or maintenance fee.

(e) The owner of an oil shale placer claim shall pay the required $550 annual rental fee to the proper BLM State Office on or before each December 31.

(f) The payment of the required maintenance fee for a mining claim, mill site, or tunnel site satisfies the requirement to file an affidavit of assessment work or a notice of intention to hold pursuant to § 3833.2.

(g) If a waived mining claim or site is transferred in total or in part to a party not qualified for a waiver, the waiver is forfeited for the mining claim or site or portion of interest therein transferred to the unqualified party. The maintenance fee for the previously waived claim or site will be paid for the assessment year in which the transfer was effective under State law pursuant to § 3833.3. The applicable deadline is the August 31 on or immediately after which the transfer is effective under State law.

(h) The Secretary will adjust the location and maintenance fees every 5 years, based upon the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics, Department of Labor. The Secretary may adjust the location and maintenance fees sooner, if he deems it reasonable, based upon changes in the CPI.

(1) Public notice of any adjustment of maintenance or location fees will be provided by July 1 of the assessment year prior to the assessment year to which the adjustment becomes effective.

(2) Any such adjustment of maintenance or location fees to reflect changes in the CPI will be payable no later than the second August 31 following the July 1 by which the notice of the adjustment was given.

29. Section 3833.1–6 is revised to read as follows:

§ 3833.1–6 Maintenance fee waiver qualifications under the Act of August 10, 1993, and other exceptions—applicable from 12 o'clock noon on September 1, 1993, until 12 o'clock noon September 1, 1999.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to Section 314(a) of FLPMA and § 3833.2 in lieu of paying the maintenance fee. Assessment work shall conform to the requirements contained in subpart 3851 of this title.

(a) In order to qualify for a waiver of the maintenance fee requirements, a small miner shall meet all of the following conditions:

(1) The claimant and all related parties shall hold no more than 10 mining claims, mill sites, and tunnel sites, or any combination thereof, on Federal lands in the United States on the date the payment is due, which is each August 31. For purposes of determining the small miner waiver, oil shale claims shall not be counted toward the 10 claim limitation for the small miner waiver of the $100 maintenance fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the maintenance fee in addition to filing for a small miner waiver.

(2) All mining claims and sites held by a claimant and all related parties shall be counted toward the 10 claim and site limit.

(3) Mill and tunnel sites of a qualified small miner, if listed upon the exemption certificate along with the affected lode and placer mining claims, are waived from payment of the maintenance fee.

(b) Mining claims and sites that are undergoing final reclamation, as approved by the authorized officer pursuant to subparts 3802, 3809, or 3814 of this title, with no intent by the owner thereof to continue mining, milling, or processing operations upon or under the mining claims or sites, are excused from payment of the maintenance fees. The owner shall file a certified statement by August 31 in the proper BLM office attesting to the reclamation status of the affected mining claims and/or sites, with reference to a reclamation plan approved by the authorized officer for plan-level activities or submitted in consultation with the authorized officer for notice-level activities, and to his or her intent to place them into permanent closure. If the surface is managed by an entity other than BLM, the claimant shall submit evidence of a final reclamation plan that conforms to the requirements of the managing entity. A certified statement of such intent and reclamation shall be filed pursuant to § 3833.1–7. The number of mining claims or sites that may properly qualify for a reclamation waiver pursuant to this paragraph is not restricted to a 10-claim limit.

(c) Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), military personnel on active duty status may, under certain conditions, qualify for an exemption from the performance of assessment work and the payment of maintenance fees. See §§ 3833.1–7(e)(2) and 3851.6 of this title.

(d) Under the following circumstances, a waiver may be obtained from the payment of the maintenance fee for mining claims and sites:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to Sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906), or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites.

(2) The claimant shall file proof of the above conditions for exemption, attested to as a certified statement, pursuant to § 3833.1–7, with the proper BLM office by the August 31 immediately preceding the assessment year for which a waiver is sought.

(3) The certified statement required by paragraph (d)(2) of this section, serves as a notice of intention to hold as to mining claims and sites for which the exemption is sought. In such cases, the payment of the $5 service charge per claim or site is due upon filing the certification statement.

(e) Payment of the maintenance fee for mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28 (b)–(e) and subpart 3852 of this title may be deferred during the period for which the deferment is granted. Deferments are governed by the following rule. If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition.

(1) If the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year. At the expiration of the deferment, all deferred fees shall be paid within 30 days of the end of the deferment, unless the claimant/owner qualifies as a small miner. If the claimant/owner qualifies as a small miner, all deferred assessment work shall be performed as provided in § 3852.5 of this title upon expiration of the deferment.

(2) If the petition for deferment is denied by the authorized officer, the maintenance fees shall be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the maintenance fees owed will result in the forfeiture of the claims contained within the petition.

(f) On mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed, the payment of the maintenance fee is excused for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title. However, no refund of previously deposited maintenance fees will be made to the mineral patent applicant.

30. Section 3833.1–7 is revised to read as follows:

§ 3833.1–7 Filing requirements for the maintenance fee waiver and other exceptions.

(a) If no change in status has occurred, a small miner exemption certification previously filed for the assessment year ending at noon on September 1, 1994, under the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374), and the pertinent regulations in effect on August 31, 1993, will be considered a proper certification filing for a waiver of payment of the maintenance fee due on August 31, 1994.

(b) The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver shall be filed with the proper BLM office pursuant to § 3833.2 and shall meet the requirements of § 3833.2–4.

(c) For mining claims and sites covered by a waiver, the filing of a waiver certification pursuant to any of paragraphs (a), (d), (e), or (f) of this section will satisfy the requirements for filing of a notice of intention to hold pursuant to § 3833.2–5, when such notice of intention to hold is otherwise required. In such a case the payment of the $5 service charge per claim/site for processing the notice of intention to hold is due upon filing of the waiver statement.

(d) In order to hold mining claims or sites for the assessment year beginning at 12 o'clock noon on September 1, 1994, each small miner shall file a

waiver certification on or before August 31, 1994. Each small miner shall file a waiver certification on or before August 31 each year thereafter to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through August 31, 1998. The small miner shall document, as provided in this paragraph (d), the claimed waiver for each assessment year a small miner's waiver is claimed, certified, and attested to under penalty of 18 U.S.C. 1001. The statement shall contain:

(1) The mining claim and site names and BLM serial numbers assigned to the mining claims and sites held by the small miner;

(2) A declaration by the claimant and all related parties that they own no more than 10 mining claims and sites in total nationwide on the date the waiver statement is due;

(3) A declaration that specifies that the assessment work requirements have been or will be completed by the date the payment is due, which is each August 31, for the assessment year just ending;

(4) The names and addresses of all owners maintaining an interest in the mining claims and sites; and

(5) The signatures of all the owners of the mining claims and sites for which a waiver is claimed.

(e) Pursuant to the Soldiers' and Sailors' Relief Act, and § 3851.6 of this title, a military person entering active service may file, or cause to be filed, in the proper BLM office, a notice of his or her entry into active military service.

(1) The filing of the notice excuses the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed after release from a military hospital, whichever is later. To be excused from paying the maintenance fee, the person cannot hold the subject claim or site with a related party, as defined in paragraph 3833.0–5(y), who does not also qualify under the Soldiers' and Sailors' Relief Act.

(2) The notice must be filed in the assessment year that the person entered active duty status, or if active duty began prior to August 30, 1994, the notice must be filed in the assessment year that he or she wishes the benefits provided in paragraph (e)(1) of this section to take effect. If the person previously filed a notice under the Soldiers' and Sailors' Relief Act to be excused from performing assessment work, and remains qualified under that Act, he or she will automatically be exempt from paying the maintenance fee.

(3) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year next following the assessment year during which the person was released from active duty or a military hospital, whichever is later.

(4) The notice shall be filed as a certified statement pursuant to paragraph (d) of this section, and shall list all mining claims and sites affected by claim/site name and BLM serial number.

31. Section 3833.2–3 is amended by revising the section heading and paragraphs (d) and (e) to read as follows:

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of August 10, 1993.

* * * * *

(d) The Act of August 10, 1993, does not affect the requirements to do assessment work in the assessment year beginning at 12 o'clock noon on September 1, 1999, or to make annual filings on or before December 30, 2000, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1998, and on or before September 29, 1998, and for which the required $100 maintenance fee was paid at the time of recording pursuant to § 314(b) of FLPMA and § 3833.1–2, payment of the maintenance fee holds the claims or sites through at least September 1, 1999.

32. Section 3833.2–6 is revised to read as follows:

§ 3833.2–6 When evidence or notice is not required.

Evidence of annual assessment work performed to hold a mining claim or a notice of intention to hold a mill site need not be filed on unpatented mining claims or mill sites if mineral entry under a mineral patent application has been allowed. The owner of that mining claim or mill site is exempt from the filing requirements of § 3833.2 and the payment of maintenance fees under § 3833.1–5 as of the date mineral entry is allowed.

33. Section 3833.3 is amended by adding paragraph (c) to read as follows:

§ 3833.3 Notice of transfer of interest.

* * * * *

(c) The filing of a transfer of interest, when properly executed and recorded under State law, is placed on the BLM record when it is filed with the proper BLM office. The transfer will be deemed to have taken place on its effective date under State law.

34. Section 3833.4 is amended by revising the heading and paragraphs (a) and (b), redesignating paragraphs (c) through (e) as (d) through (f), respectively, and adding paragraph (c), to read as follows:

§ 3833.4 Failure to file, or to pay maintenance or location fees.

(a)(1) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before the December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, shall conclusively constitute a forfeiture of the mining claim or site.

(2) Failure to record the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or failure to pay the maintenance or location fees required by §§ 3833.1–4, 3833.1–5, and 3833.1–7, or failure to file the documents required by § 3833.1–7 (b) through (d) within the time periods prescribed therein for claimants who also fail to pay the maintenance fee, shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site.

(3) Claimants who fail to pay the maintenance fee, but file a waiver certification under § 3833.1–7, shall perform the assessment work required by subpart 3851 of this title by the waiver statement filing deadline, or the mining claims under the invalid waiver certification will be conclusively deemed forfeited for failure to pay the maintenance fee on time.

(4) Failure to list the 10 or fewer mining claims and/or sites for which the fee is requested to be waived on the applicable certification document filed pursuant to 3833.1–6 or 3833.1–7 will result in the affected mining claims and/or sites being deemed abandoned by the owner or owners thereof.

(b) Failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7(d)–(f), 3833.2–4(a), 3833.2–4(b), 3833.2–5(b) and 3833.2–5(c), when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner.

(c) Failure to record a transfer of interest under § 3833.3 will result in the Bureau of Land Management refusing to recognize the interest acquired by the

transferee or to serve notice of any action, decision, or contest on the unrecorded owner.

PART 3850—ASSESSMENT WORK

35. The authority citation for part 3850 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28k; 50 U.S.C. Appendix 565; 107 Stat. 405.

Subpart 3851—Assessment Work: General

36. Section 3851.3 is amended by revising paragraph (c) to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

* * * * *

(c) The Act of August 10, 1993, with certain exceptions for small miners, temporarily suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $100 maintenance fee per mining claim in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 (30 U.S.C. 242) suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The maintenance fee requirements and waivers from the maintenance fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

37. Section 3851.4 is revised to read as follows:

§ 3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of maintenance fees.

(a) Upon the failure of any co-owner of a mining claim or mill or tunnel site to contribute the proper proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the maintenance fee required under §§ 3833.1–5 and 3833.1–6 of this title, may, at the expiration of the assessment year, give such delinquent co-owner personal notice of this failure in writing. Alternatively, this notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the claim by law passes to the co-owners who have made the expenditures or improvements.

(b) A claimant alleging ownership of a forfeited interest under paragraph (a) of this section who requests the authorized officer to change the ownership records of the affected mining claims or sites shall present the following:

(1) Statement of the publisher of the newspaper as to the facts of publication, giving the beginning and ending dates of publication, a printed copy of the notice published, and a statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute, or

(2) Evidence of personal notice of delinquency upon the delinquent party. If notice is effected by mail, the minimum sufficient evidence shall consist of a copy of the notice and a copy of the return receipt of the U.S. Postal Service evidencing receipt by the delinquent party of a registered or certified envelope containing the notice. If notice was made in person, an affidavit signed and dated on the date of notice will suffice as evidence of such notice; and

(3) In all cases, a signed and dated statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute.

(c) Upon determination by the authorized officer that paragraphs (a) and (b) of this section have been complied with, the BLM records of the mining claim shall be changed pursuant to § 3833.3 of this title. Such a change in ownership requires that the claimant submit the service charge required for a transfer of interest pursuant to § 3833.1–4 of this title.

(d) Active duty military personnel who give notice and comply with § 3851.6 are not subject to the provisions of this section.

38. Section 3851.5 is revised to read as follows:

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work and payment of maintenance fees is not required after the date that the mineral entry has been allowed.

(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work and payment of maintenance fees is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of maintenance fees, beginning in the next assessment year following the assessment year that the mineral entry was canceled.

39. Section 3851.6 is added to read as follows:

§ 3851.6 Assessment work not required for active duty military personnel.

Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), a person entering active military service is exempt from the performance of annual assessment work under this subpart for each assessment year in which the service person is on active duty.

(a) To claim the exemption, the person entering active military service shall file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service. The notice shall be filed in the assessment year that the person entered active duty status.

(b) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(c) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year beginning at least 6 months after the date the person was released from active duty or a military hospital, whichever is later.

(d) The notice shall be filed as a certified statement pursuant to section 3833.1–7 of this title, and shall list all mining claims and sites affected by claim name and BLM serial number.

Subpart 3852—Deferment of Assessment Work

40. Section 3852.2 is amended by revising the first and second sentences to read as follows:

§ 3852.2 Filing of petition for deferment, contents.

(a) In order to obtain a deferment, the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment. No particular form of petition is required, but the applicant shall attach to one copy thereof a copy of the notice to the public required by 30 U.S.C. 28e showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded. * * *

* * * * *

41. Section 3852.3 is revised to read as follows:

§ 3852.3 Notice of action on petition to be recorded.

The claimant shall file or record, in the local recording office in which the notice of petition for deferment was filed or recorded, a copy of the order or decision of the BLM authorized officer disposing of the petition.

[FR Doc. 94–21388 Filed 8–29–94; 8:45 am]
BILLING CODE 4310–84–P

CIRCULAR 2658

Vol. 60 No. 45 Wednesday, March 8, 1995 p 12711 (Rule)

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2720

RIN 1004-AB86

[WO-690-02-4120-24 1A; Circular No. 2658]

Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends 43 CFR part 2720 in order to streamline and clarify the procedures for conveying Federally-owned mineral interests to the owner of the surface estate overlying the mineral interests. Section 209 of the Federal Land Policy and Management Act (FLPMA) allows such conveyances when there are no known mineral values present, or when the reservation of the mineral rights is interfering with or precluding appropriate nonmineral development of the land that would be more beneficial than mineral development. The rule is necessary because the wording of the existing regulation has caused considerable confusion on the part of both the public and public land managers, and has been interpreted to require expensive mineral surveys in many cases where such surveys were unnecessary. The final rule will simplify the conveyance of Federally-owned mineral interests.

EFFECTIVE DATE: April 7, 1995.

ADDRESSES: Suggestions or inquiries should be sent to: Director (690), Bureau of Land Management, 1849 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Clyde Topping, (202) 452-0380.

SUPPLEMENTARY INFORMATION: Five sections of subpart 2720 are amended in this final rule. The amendments in two of these sections are substantive and are designed to meet the objectives stated above in the Summary, and are explained below in the discussion of the comments received on the rule. The remaining three sections-sections 2720.0-6, 2720.1-3, and 2720.3-contain minor clarifications and corrections in language that were explained in the preamble to the proposed rule published in the Federal Register on September 28, 1993 (58 FR 50536). The rule allowed 60 days for public comment. During this public comment period, 1 public comment was received.

The comment basically supported the rule. It also asked for a reaffirmation of BLM's policy regarding exchanges involving surface and mineral rights, which allows both parties to an exchange to reserve mineral rights or to convey other mineral rights in order to keep the exchange balanced. This final rule has no effect on this BLM policy.

The statute that is implemented in these regulations allows conveyance of the mineral rights when the Secretary of the Interior finds that there are no known mineral values or that the mineral reservation is interfering with or precluding appropriate nonmineral development that is more beneficial than mineral development. It requires payment of administrative costs and the current fair market value of the minerals conveyed. It does not require the retention of non-valuable minerals in Federal ownership where there is a beneficial use of the surface with which mineral development would interfere. If the Secretary finds that mineral development in a particular case may be more beneficial than the surface use planned by the non-Federal owner, the conveyance would not be allowed.

The definition of ''known mineral value'' has been amended in the final rule to make it clear that mineral values will be determined in light of the current market, and to refer to lands containing mineral formations rather than to lands with underlying formations.

Minor changes in style have been made in the regulatory text to improve clarity and readability.

The principal author of this final rule is Clyde Topping of the Biotic and Landscape Resource Team, assisted by the Regulatory Management Team, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review. Under the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusions'' means a category of actions that do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required. The BLM has made this determination under 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, which includes ''regulations * * * the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case,'' because the environmental effects of the transactions covered by this rule (a great variety of possible proposed uses of non-Federal surface) are entirely speculative and conjectural, and the transactions covered by the regulations will be subject to the NEPA process on a case-by-case basis as they are proposed. The BLM further determined that the

rule will not trigger any of the 10 exceptions disallowing categorical exclusions listed in 516 DM 2, Appendix 2. These 10 exceptions apply to individual actions, not broad regulations covering a multitude of possible individual actions.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the final rule will not have a significant economic impact on a substantial number of small entities. The rule, by clarifying provisions that have been misinterpreted in the past, obviates unneeded and expensive mineral exploration programs to prove the market value of reserved mineral rights that are not valuable in the market sense. The rule imposes no costs, and makes the regulatory process less cumbersome.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not require the taking of any property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

The information collection requirements contained in part 2720 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1004-0153.

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 43 CFR Part 2720

Administrative practice and procedure, Public lands-mineral resources, Public lands-sale.

Dated: March 2, 1995.

Bob Armstrong,
Assistant Secretary of the Interior.

For the reasons stated in the preamble, and under the authorities stated below, part 2720 of Group 2700, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as follows:

PART 2720-CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Subpart 2720-Conveyance of Federally-Owned Mineral Interests

1. The authority citation for part 2720 is revised to read as follows:

Authority: 43 U.S.C. 1719 and 1740.

2. Section 2720.0-5(b) is revised to read as follows:

2720.0-5 Definitions.

* * * * *

(b) Known mineral values means mineral rights in lands containing geologic formations that are valuable in the monetary sense for exploring, developing, or producing natural mineral deposits.
The presence of such mineral deposits with potential for mineral development may be known because of previous exploration, or may be inferred based on geologic information.

* * * * *

3. Section 2720.0-6 is amended by revising the first sentence thereof to read as follows:

2720.0-6 Policy.

As required by the Federal Land Policy and Management Act, the Bureau of Land Management may convey a federally owned mineral interest only when the authorized officer determines that it has no known mineral value, or that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. * * *

4. Section 2720.0-9 is added to read as follows:

2720.0-9 Information collection.

(a) The Office of Management and Budget has approved under 44 U.S.C. 3507 the information collection requirements contained in part 2720 and assigned clearance number 1004-0153. The Bureau of Land Management is collecting the information to permit the authorized officer to determine whether the Bureau of Land Management should dispose of Federally-owned mineral interests. The Bureau of Land Management will use the information collected to make these determinations. A response is required to obtain a benefit.

(b) The Bureau of Land Management estimates the public reporting burden for this information to average 8 hours per response, including the time for reviewing regulations, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, D.C. 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0153, Washington, D.C. 20503.

5. Section 2720.1-3 is amended by revising the concluding text of paragraph (b) to read as follows:

2720.1-3 Action on application.

* * * * *

(b) * * *

The authorized officer, in reaching a determination as to whether there are any known mineral values in the land and,

if so, the estimated costs of an exploratory program, if one is needed, will rely upon reports on minerals prepared by or reviewed and approved by the Bureau of Land Management.

* * * * *

6. Section 2720.2 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

^U 2720.2 Determination that an exploratory program is not required.

(a) * * *

(b) The authorized officer will not require an exploratory program to ascertain the presence of mineral values where the authorized officer determines that a reasonable person would not make exploration expenditures with expectations of deriving economic gain from the mineral production.

(c) The authorized officer will not require an exploratory program if the authorized officer determines that, for the mineral interests covered by the application, sufficient information is available to determine their fair market value.

7. Section 2720.3 is amended by revising the fourth sentence of paragraph (a), and paragraph (b) in its entirety, to read as follows:

^U 2720.3 Action upon determination of the fair market value of the mineral interests.

(a) * * * The notice must require the applicant to pay both the fair market value of the Federal mineral interests and the remaining administrative costs owed within 90 days after the date the authorized officer mails the notice.

* * * * *

(b) The Bureau of Land Management will convey mineral rights on lands for which this part does not require an exploratory program upon payment by the applicant of fair market value for those mineral interests and all administrative costs of processing the application to acquire the mineral rights.

[FR Doc. 95-5626 Filed 3-7-95; 8:45 am]
BILLING CODE 4310-84-P

The Contents entry for this article reads as follows:

Land resource management:
  Disposition; sales-
    Federally-owned mineral interests conveyance; procedures streamlining
      and clarification, 12710

CIRCULAR 2660

Vol. 60 No. 189 Friday, September 29, 1995 p 50452 (Rule)

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460, 5510, 9230, and 9260

[WO-230-6310-02-24 1A; Circular No. 2660]

RIN 1004-AB97

Free Use of Timber: General; Trespass; Law Enforcement: Criminal

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the existing Bureau of Land Management (BLM) regulations on timber trespass. The rule edits the existing regulations to make them more orderly and easier to read, and adds a list of prohibited acts necessary to provide guidance concerning the administration of forest product contracts and free use permits, and law enforcement.

EFFECTIVE DATE: October 30, 1995.

ADDRESSES: Suggestions or inquiries should be sent to Director (230), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bob Bierer, (202) 452-7755.

SUPPLEMENTARY INFORMATION: The BLM published a proposed rule on timber trespass in the Federal Register on September 13, 1993 (58 FR 47847), requesting comments by November 12, 1993. During the 60-day comment period, comments were received from 3 forest industry associations. The comments are discussed in the same sequence as the sections of the proposed rule. Many of the suggestions were adopted and are reflected in the final rule.

The rule is a continuation of the effort to provide more effective control of trespass of timber and other vegetative resources on public lands. It provides further guidance to supplement the final rule published on March 11, 1991 (56 FR 10173), and includes specific prohibited acts to which BLM law enforcement personnel can refer to in issuing citations.

General Comments

The three comments noted in support of the proposed rule that theft of any timber is a serious matter and there is continued support for strong law enforcement activities, including prosecution of any person found guilty of stealing federal timber.

The law enforcement and resource protection program of the BLM is quite often involved in detecting and resolving trespasses against and thefts of timber and other vegetative resources. Uncertainty in prohibited acts or applicable penalties often causes their efforts to obtain criminal prosecution to be unsuccessful.

The prohibited acts set forth in this rule will enhance law enforcement actions and serve as a deterrent to future trespass.

One comment suggested that a timber contract should allow sufficient flexibility to assure that the objectives of both parties are satisfied, especially when circumstances arise that were unforeseen at the time of contract formation. That is the intent of this final rule.

Comments on Amendment of 43 CFR Part 5460

Two comments stated that the prohibited acts relate only to BLM-administered lands and that the final rule should clearly state this limitation. The language in ^U 5462.2(a) has been amended to clarify this point.

Another comment suggested deletion of the phrase ''See ^U 9239.1 of this title for trespass and subpart 9265 of this title for criminal prosecution'' from 5462.2(a). The comment has been adopted. The cross-reference is rendered unnecessary by the addition of the penalty provision at ^U 5462.2(c).

A comment suggested that the language in ^U 5462.2(b)(1) is ambiguous as to what may constitute ''otherwise damaging any timber'' and suggested that additional specific criteria as to what constitutes ''damage'' be developed to avoid arbitrary and inconsistent on-the-ground decisions. The prework conference required prior to commencement of operations provided for in the BLM Timber Sale Procedure Handbook is designed to discuss and clarify concerns such as this, and, in the context of cutting and removing timber, we do not consider ''otherwise damaging any timber'' to be ambiguous. The comment was not adopted.

On ^U 5462.2(b)(2), the comments pointed out that while it is proper in most situations to require a BLM employee to mark or designate all standing timber before it can be cut, there are instances where a logger has conflicting direction from two different Federal agencies or regulations. For example, Occupational Safety and Health Act (OSHA) regulations require operators to fell any tree constituting a hazard to safe working conditions immediately, and failure to do so may subject them to a fine. The only option available to the operator is to leave the area until a BLM employee arrives and designates the tree for felling, which is impractical for both parties. The comments noted that some allowance needs to be made for safety, or the agency must guarantee timely timber sale administration. Again, prework conferences are intended to resolve potential conflicts

and procedural problems such as this, and the comments were not adopted in the final rule.

Three comments recommended removing ^U 5462.2(b)(3), because BLM no longer offers scaled sales. The comments were not adopted since this prohibited act is intended primarily for small salvage and firewood sales, and the BLM may occasionally offer scaled salvage timber sales where appropriate to harvest dead timber promptly to preclude excessive deterioration.

Three comments suggested that ^U 5462.2(b)(4) should be changed to specify that marking or designating products in a similar manner to that employed by BLM applies only to BLM-administered lands. These comments were adopted and language added to clarify this point.

Three comments argued that proposed ^U 5462.2(b)(6) could result in numerous timber sale defaults, not related to timber theft. Many timber sale contract violations are minor and should be dealt with under the terms and conditions of the contract. The recommendation to remove this paragraph has been adopted in the final rule.

Three comments stated that the language in ^U 5462.2(b)(5) and (7) would require all persons working on a BLM timber sale or hauling logs from a sale to have copies of the contract or permit in their possession and that this is unreasonable. They suggested that requiring the purchaser or its desig-nated representative to have a copy of the contract, as well as requiring each truck driver to have copies of the haul permit, should satisfy any accountability objective. This is an acceptable alternative, and provides for sufficient documentation and accountability. Language has therefore been added to adopt these comments.

One comment noted that ^U 5462.2(b)(7) authorizes any BLM employee to stop people associated with a timber sale at any time and demand that they produce a permit or contract. It questions whether all BLM employees have sufficient experience with timber sales to warrant such authority. Language was added to limit the BLM personnel to those persons acting within their designated authority as sale inspectors, contract administrators, contracting officers, and law enforcement officers.

Several comments stated that BLM lacks authority to enforce State and local laws, especially in the absence of a cooperative law enforcement agreement, and that BLM employees should concentrate their efforts on on-the-ground inspection of timber sale operations rather than enforcing State and local laws. Section 5462.2(b)(8) of the proposed rule has been amended in the final rule to make it consistent with the Federal Land Policy and Management Act provision for cooperation with State and local regulatory and law enforcement officials (43 U.S.C. 1733(d)) and the language in ^U 5462.2(b)(1).

For purposes of clarity, the phrase ''by fraud'' in ^U 5462.2(b)(10) of the proposed rule has been removed and replaced with language more precisely defining what constitutes fraud as it relates to timber and other vegetative resources.

Three comments suggested that BLM define what constitutes a negligent act by an operator referred to in ^U 5462.2(b)(11). One of the comments added that the concept of negligence should

be removed and the BLM focus on ''intentional destruction.'' These comments were not adopted in the final rule. The prework conferences provided for in standard BLM timber sale contracts are the appropriate forums to discuss and clarify what constitutes a ''negligent act.''

The paragraphs of ^U 5462.2(b) have been renumbered in the final rule to accommodate the removal of paragraphs (3) and (6).

A comment recommended addition of a new ^U 5462.3 entitled ''Penalties'' with a description of the penalties for knowingly and willfully violating the prohibited acts under ^U 5462.2(b) to make it clear that criminal penalties apply to the prohibited acts. This comment has been adopted in the final rule, but by adding a new paragraph (c) to ^U 5462.2 rather than a new ^U 5462.3.

Comments on Amendments to 43 CFR Subpart 5511

One comment recommended removal of the phrase ''See ^U 9239.1 of this title for trespass and subpart 9265 of this title for criminal prosecution'' from ^U 5511.4(a). The comment was adopted. The cross-reference is rendered unnecessary by the addition of ^U 5511.5-Penalties.

A comment recommended addition of a new ^U 5511.5 entitled ''Penalties'' with a description of the penalties for knowingly and willfully violating the prohibited acts under 5511.4(b) to make it clear again that criminal penalties apply. The comment was adopted.

Comments on Amendment of 43 CFR Part 9230

No public comments addressed this part in the proposed rule. The BLM is currently in the process of updating and amending part 9230-Trespass. The changes promulgated in this rule relating to timber trespass will be included in the subsequent revision of part 9230.

Comments on Amendment of 43 CFR Part 9260

The BLM is also preparing to update and revise part 9260-Law Enforcement-Criminal. Organizational changes in ^U 9265.6 have been adopted in the final rule and language has been added to that section detailing how penalties will be determined. These changes are made in order to standardize the penalty provisions in the various regulations that relate to timber, trees, and other vegetative resources. Paragraphs (a) and (b)(1) in the final rule are new and refer to the penalties imposed under the Sentencing Reform Act of 1984 (18 U.S.C. 3551 et seq.), as they apply to the regulations for timber sales administration and free use of timber. The penalties are statutory and would apply whether they appear in the regulations or not. Paragraph (a) in the proposed rule has been renumbered (c), and paragraph (b) in the proposed rule has been renumbered (b)(2) in the final rule. Cross references to other regulations in title 43 governing

the use of timber for mining and agriculture have been added to paragraph (b)(2). Paragraph (c) in the proposed rule has been renumbered (d) in the final rule to accommodate the earlier additions. No public comments addressed this part in the proposed rule.

The principal author of this final rule is Robert Bierer, Biological and Heritage Implementation Team, assisted by the Regulatory Management Team, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule will not create environmental impacts. No critical element of the human environment is affected because the final rule merely promulgates a series of prohibited acts related to the ministerial aspects of the administration of timber sales contracts and the free use of timber. It does not prescribe or prohibit any substantive activities or methods for carrying out timber harvest operations on BLM-managed lands. It prohibits harvesting and removing timber without the requisite permits or haul tickets, prohibits the violation of other laws and regulations, including State and local laws, and using fraud or trickery to obtain a free-use permit. No sales or new uses of timber, and no other uses of land and resources, are authorized by this rule.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the rule will not have a significant economic impact on a substantial number of small entities. There will be no cost increases imposed on the lumber industry other than those caused by violations of law, and there would thus be no economic effect on small business entities that do not violate the law. Also, the rule does not distinguish between business entities based on their size.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 5460

Forest and forest products, Government contracts, Public lands.

43 CFR Part 5510

Forest and forest products, Public lands, Surety bonds.

43 CFR Part 9230

Penalties, Public lands.

43 CFR Part 9260

Penalties, Public lands.

Dated: July 19, 1995.

Sylvia V. Baca,
Acting Assistant Secretary of the Interior.

For the reasons stated in the preamble, and under the authorities cited below, parts 5460 of Group 5000, 5510 of Group 5500, Subchapter E, and parts 9230, and 9260 of Group 9200, Subchapter I, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

PART 5460-SALES ADMINISTRATION

1. The authority citation for part 5460 continues to read as follows:

Authority: 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e.

2. Subpart 5462 is amended by adding new paragraph (c) to ^U 5462.1 and new ^U^U 5462.2 and 5462.3 to read as follows:

^U 5462.1 Contract and permit compliance.

* * * * *

(c)(1) The authorized officer may cancel a contract or permit upon determining that the holder has failed to comply with a law or regulation pertinent to the contract or permit. The authorized officer may also cancel a contract or permit upon determining that the holder has failed to comply with a stipulation or requirement contained in the contract or permit and the noncompliance is detrimental to the public interest. Individual contracts or permits may contain specific language defining the remedies or penalties associated with noncompliance.

(2) Cancellation shall be mandatory in cases of intentional falsification of information used to obtain the permit or contract.

^U 5462.2 Prohibited acts.

(a) The acts or omissions listed in paragraph (b) of this section apply only to BLM-administered lands and will render the person(s) responsible liable to the United States in a civil

action for trespass, and such person(s) may be prosecuted criminally.
If the authorized officer determines such acts or omissions to be detrimental to the public interest, the timber sale contract or permit held by the purchaser responsible for such acts or omissions may be canceled.

(b) The following activities are prohibited:

(1) Cutting, removing, or otherwise damaging any timber, tree, or other vegetative resource, except as authorized by a forest product sale contract, permit, or Federal law or regulation.

(2) Cutting any standing tree, under a permit or timber sale contract, before a BLM employee has marked it or has otherwise designated it for cutting.

(3) Removing any timber or other vegetative resource cut under a permit or timber sale contract, except to a place designated for scaling or measurement, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a BLM employee.

(4) Stamping, marking with paint, tagging, or otherwise identifying any tree or other vegetative resources on BLM-administered lands in a manner similar to that employed by BLM employees to mark or designate a tree or other vegetative resources for cutting, removal, or transportation.

(5) Transporting timber or other vegetative resources without a valid haul ticket that pertains to the material in question, except as authorized by Federal law or regulation.

(6) Except as authorized by Federal law or regulation, purchasers or their designated representatives, while engaging in any activity connected with the harvest or removal of forest products, failing to have in their possession and/or failing to produce any required permit or forest product sale contract for inspection upon demand by a BLM employee or any official of a cooperating law enforcement agency acting within his or her designated authority as a sale inspector, administrator, contracting officer, or law enforcement officer.

(7) Violating any State or local laws and ordinances relating to local permits, tagging, and transportation of timber, trees, or other vegetative resources.

(8) Violating any of the provisions regulating export and substitution contained in subparts 5400, 5403, and 5420 of this title.

(9) Obtaining any forest product sale contract or permit or taking any timber, trees, or other vegetative resources through falsifying, concealing, or covering up by any trick, scheme, or device a material fact, or making any false, fictitious, or fraudulent statement or representation, or making or using a false, fictitious, or fraudulent statement or entry, including altering any forest product sales contract or permit or using an unauthorized reproduction of any official load tag.

(10) Negligent or intentional destruction of or injury to any timber or other vegetative resource during operations under a forest product sale contract or permit.

^U 5462.3 Penalties.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any individual who knowingly and willfully commits the prohibited acts under ^U 5462.2(b) is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $100,000 in accordance with the applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 et seq.), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $200,000.

PART 5510-FREE USE OF TIMBER

3. The authority citation for part 5510 continues to read as follows:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, R.S. 2478, sec. 323, 41 Stat. 450; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 48 U.S.C. 423, 43 U.S.C. 1201, 30 U.S.C. 189.

Subpart 5511-Free Use Regulations

^U 5511.1-1 [Amended]

4. Section 5511.1-1 is amended by removing paragraph (f)(3).

^U 5511.1-4 [Amended]

5. Section 5511.1-4 is amended by removing paragraphs (e) and (f).

6. Section 5511.2-1 is amended by revising paragraph (a) to read as follows:

5511.2-1 Free use privilege; cutting by agent.

(a) Except as provided in ^U 5511.1-4 the only timber which may be cut under ^U^U 5511.2-1 through 5511.2-5 for free use in Alaska is timber on vacant public lands in the State not reserved for national forest or other purposes. The timber so cut may not be sold or bartered. The free use privilege does not extend to associations or corporations, except churches, hospitals, and charitable institutions. Any applicant entitled to the free use of timber may procure it by agent, if desired, but no part of the timber may be used in payment for services in obtaining it or in manufacturing it into lumber. Timber may not be cut by an applicant under this section after the land has been included in a valid homestead settlement or entry or other claim, except that any applicant for the free use of timber who has been granted a permit to cut as hereinafter provided, will have a right to

cut the timber while the permit remains in force as against a subsequent applicant who may wish to obtain the same timber by purchase.

* * * * *

5511.2-4 [Amended]

7. Section 5511.2-4 is amended by revising the reference ''5511.2-6'' to read ''5511.2-5''.

5511.2-5 [Amended]

8. Section 5511.2-5 is removed.

5511.2-7 [Redesignated as ^U 5511.2-5 and amended]

9. Section 5511.2-7 is redesignated as ^U 5511.2-5 and the reference ''^U 5511.2-4'' at the end of the section is revised to read ''^U 5511.1-4''.

10. Section 5511.4 is added to read as follows:

5511.4 Prohibited acts.

(a) In addition to the prohibited acts listed in ^U 5462.2, the acts or omissions listed in paragraph (b) will render the person(s) responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally.

(b) The following acts are prohibited:

(1) Obtaining any free use permit or taking any timber, trees, or other vegetative resources through falsifying, concealing, or covering up by any trick, scheme, or device a material fact, or making any false, fictitious, or fraudulent statements or representations, or making or using any false, fictitious or fraudulent statement or entry, including altering of any free use permit or using a reproduction of any official load tags.

(2) Using timber secured under a free use permit for any purpose other than provided for in ^U^U 5511.1-1(d), 5511.1-2, 5511.1-4, 5511.2-2, 5511.3-6, or 5511.3-8.

(3) Violating any of the terms and conditions of a free use permit.

(4) Exporting timber cut under a free use permit from the State in which it was cut, except as provided in ^U 5511.1-1(e).

(5) The cutting of timber under a free use permit for sale, barter, speculation, or use by others than the permittee.

11. Section 5511.5 is added to read as follows:

5511.5 Penalties.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a), any individual who knowingly and willfully commits the prohibited acts under ^U 5511.4(b) is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $100,000, or not more than $250,000 if commission of the prohibited

acts results in death, in accordance with the applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 et. seq.), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $200,000, or not more than $500,000 if commission of the prohibited acts results in death.

PART 9230-TRESPASS

12. The authority citation for 43 CFR part 9230 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701, et seq.; 18 U.S.C. 1851-1858.

Subpart 9239-Kinds of Trespass

13. Section 9239.1-1 is amended by removing paragraph (c) and (d), and revising the heading and paragraph (b) to read as follows:

9239.1-1 Unauthorized cutting, removal, or injury.

* * * * *

(b) Commission of any of the acts listed in ^U^U 5462.2 and 5511.4 of this title constitutes a trespass.

14. Section 9239.1-2 is amended by revising the heading and paragraph (a) to read as follows:

9239.1-2 Penalty for trespass.

(a) In accordance with ^U^U 9239.0-7, 9239.0-8, and 9239.1-1 of this subpart, anyone responsible for a trespass act is liable to the United States in a civil action for damages and may be prosecuted under criminal law as provided in ^U 9265.6 of this chapter.

* * * * *

15. Section 9239.1-3 is amended by adding paragraph (a)(4) to read as follows:

9239.1-3 Measure of damages.

(a) * * *

(1) * * *

(4) In the case of a purchase from a trespasser, if the purchaser has no knowledge of the trespass, but should have had such knowledge through reasonable diligence, the value at the time of the purchase.

* * * * *

PART 9260-LAW ENFORCEMENT-CRIMINAL

16. The authority citation for 43 CFR part 9260 is revised to read as follows:

Authority: 16 U.S.C. 433; 16 U.S.C. 460l-6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851-1861; 18 U.S.C. 3551 et seq.; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

Subpart 9265-Timber and Other Vegetative Resources Management

17. The heading of subpart 9265 is revised to read as set forth above.

18. Section 9265.0-3 is amended by inserting after ''title 18 U.S.C.,'' the phrase ''and section 1733 of title 43 U.S.C.,''.

19. Section 9265.4 is amended by adding text to read as follows:

9265.4 Sales of forest products, general.

Commission of any of the acts listed in ^U 5462.2 of this title is a violation of Federal regulations and may subject the responsible person(s) to criminal penalties under titles 18 and 43 of the United States Code.

20. Section 9265.5 is revised to read as follows:

9265.5 Non-sale disposals, general.

Commission of any of the acts listed in ^U 5511.4 of this title is a violation of Federal regulations and may subject the responsible person(s) to criminal penalties under titles 18 and 43 U.S.C.

21. Section 9265.6 is added to read as follows:

9265.6 Penalties.

(a) Sales administration. Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any individual who knowingly and willfully commits the prohibited acts under ^U 5462.2(b) of this title is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $100,000 in accordance with the applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 et seq.), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $200,000, or not more than $500,000 if commission of the prohibited acts results in death.

(b) Free use of timber. (1) Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a), any individual who knowingly and willfully commits the prohibited

acts under 5511.4(b) of this title is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $100,000, or not more than $250,000 if commission of the prohibited acts results in death, in accordance with the applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 et seq.), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $200,000, or not more than $500,000 if commission of the prohibited acts results in death.

(2) Exceptions for mining and agriculture. This section shall not prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands. Use or taking of timber for these exceptions is subject to the regulations provided in part 2920-Leases, Permits and Easements, part 3715-Use and Occupancy of Mining Claims, subpart 3802-Exploration and Mining, Wilderness Review Program, and/or subpart 3809-Surface Management.

(c) Timber removed or transported. Under 18 U.S.C. 1852, any person:

(1) Who unlawfully cuts, or wantonly destroys, any timber growing on the public lands of the United States;

(2) Who unlawfully removes any timber from said public lands, with intent to export or dispose of the same; or

(3) Who, being the owner, master, pilot, operator, or consignee of any vessel, motor vehicle, or aircraft or the owner, director, or agent of any railroad, knowingly transports any timber unlawfully cut or removed from said lands, or lumber manufactured therefrom; shall be subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $100,000, or not more than $250,000 if commission of the prohibited acts results in death, in accordance with the applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 et seq.), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $200,000, or not more than $500,000 if commission of the prohibited acts results in death.

(d) Trees cut or injured. Under 18 U.S.C. 1853, whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the

consent of the United States, shall be subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $100,000 in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 et seq.), or imprisonment not to exceed 12 months, or both, for each offense, and any organization that commits these prohibited acts is subject to arrest and trial by the United States Magistrate and, if convicted, shall be subject to a fine of not more than $200,000.

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The Contents entry for this article reads as follows:

Forest management:
  Forest products; sales-
    Forest product contracts administration and free use permit and law enforcement; prohibited acts, 50448

Circular No. 2661

[Federal Register: June 24, 1996 (Volume 61, Number 122)]
[Rules and Regulations]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2920

[WO-350-1430-00-24 1A; Circular No. 2661]
RIN 1004-AB51

Leases, Permits, and Easements; Effective Dates of Permit Decisions; Appeal Procedure

AGENCY: Bureau of Land Management, Interior.
ACTION: Final rule.

SUMMARY: This final rule amends the general lease and permit regulations of the Bureau of Land Management (BLM). It provides that BLM general use, occupancy, and development permit decisions will take effect immediately if the contemplated uses meet the requirements for minimum impact permits under the existing regulations. Permits issued under such decisions will remain in effect during the pendency of any appeal to the Interior Board of Land Appeals (IBLA), unless IBLA stays the decision. The regulatory text in the rule pertains only to minimum impact permits. If a proposed use does not satisfy the requirements for a minimum impact permit under the existing regulations (that is, if the proposed use would conflict with BLM plans, policies, and programs for the affected lands, or local zoning ordinances, or cause appreciable damage to public lands or resources or improvements), the requested permit would not qualify as a minimum impact permit and the provision adopted today would not apply. In such a case, BLM would not issue a permit until the applicant meets all the requirements contained in the existing regulations. Appeals of permits other than minimum impact permits are not affected by this final rule. Similarly, appeals of BLM lease decisions are not affected by this rule. These appeals of BLM decisions to issue leases and non-minimum impact permits will continue to be governed by the general appeal procedures of the Department of the Interior, and the use authorizations appealed will not take immediate effect under this rule. The amendments to the appeals process in this final rule are needed to avoid delays in BLM's issuance of permits for environmentally benign public land uses.

EFFECTIVE DATE: July 24, 1996.

ADDRESSES: You may send inquiries or suggestions to: Director (350), Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Vanessa Engle, as to the permit program, (202) 452-7776, or Jeff Holdren, as to the rule or the permit program, (202) 452-7779.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule and Response to Comments
III. Procedural Matters

I. Background

A. Summary of the Bureau of Land Management Permit Program

The existing regulations in 43 CFR part 2920 contain procedures for many types of land users to obtain authorizations in the form of permits, leases, and easements to use, occupy, and develop public lands and their resources. BLM's statutory authority to allow these uses is found in Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) (FLPMA). BLM's general authority for issuing regulations is found in Section 310 of FLPMA (43 U.S.C. 1740). This final rule relates only to permits issued for uses causing minimal environmental impacts on lands and resources, and does not pertain to leases, easements, or other permits.

BLM authorizes only those uses that conform to applicable law, and to BLM plans, policies, objectives, and resource management programs. Permits are normally issued for short-term uses that do not exceed 3 years. (Uses with terms shorter than 3 years but involving heavier impacts may require leases.) Permits are required for activities that disrupt normal visitor activity or other authorized uses, or involve the placement, storage, or use of temporary structures or facilities, or materials or equipment. BLM may terminate a permit immediately for noncompliance, or to allow another disposition or use of the lands. Typical uses requiring permits under these regulations are equipment storage, beekeeping, motion picture and advertising photography, and scientific research. The regulations in part 2920 do not cover specific activities governed by other regulations in this title, such as grazing (43 CFR part 4100), mining (parts 3700 and 3800), mineral leasing (parts 3100, 3200, 3400, and 3500), mineral material sales (part 3600), and timber sales (part 5400). Also, certain activities require no authorization, such as still photography not intended for advertising purposes. There is no need to apply for a permit or lease for such activities.

Section 2920.2-2 authorizes the issuance of permits for activities that cause no appreciable impacts on the public lands, their resources or improvements. If a proposed use qualifies for a minimum impact permit under section 2920.2-2, BLM is not required to publish a notice of realty action under section 2920.4.

B. Proposed Rules

The final rule published today is a stage of a rulemaking process that will culminate in the comprehensive revision of the lease and permit regulations in 43 CFR part 2920. The rule published today addresses only the effective date of minimum impact land use permits. This rule was preceded by publication of two proposed rules, the first proposing to revise the entire part 2920, and the second proposing to amend the part by adding new provisions or changing previously proposed provisions.

The first proposed rule was published in the Federal Register on November 21, 1990 (55 FR 48810). This proposed rule was intended to streamline the land use approval process by removing a category of authorizations (easements) and cumbersome administrative procedures. The BLM invited public comments for 60 days, and received comments from 16 sources: 10 from offices of Federal agencies, 2 from business entities, 1 from an association, and 3 from State government agencies.

After the public comment period closed, a controversy arose concerning issuance of filming permits. Some parties expressed concerns about potential environmental degradation related to commercial activities, particularly permits for feature films. Other parties, primarily filmmakers and those who provide services to them, including State and local government agencies, objected to provisions that allow delay when parties file administrative appeals of film permits.

The BLM published a further proposed rule in the Federal Register on February 9, 1995 (60 FR 7878), which was intended to allow more expeditious processing and issuance of permits. It also would have

provided for immediate implementation of certain types of permits. The further proposed rule designated two categories of permits: ''minimum impact permits'' and ''full permits.'' ''Minimum impact permits'' were to be issued for activities having a minimal impact on the public lands and their resources. These permits were to become effective immediately upon execution by the BLM authorized officer and were not to be subject to the general stay process in 43 CFR 4.21(a). ''Full permit'' decisions (and also lease issuance decisions) would have remained subject to the 43 CFR 4.21 stay provisions. The further proposed rule contained a set of criteria for determining when a full permit would be required.

The BLM sought public response in the further proposed rule to specific questions relating to permits and rental schedules. Only the first question related to appeals, and is discussed below. The remaining questions will be discussed when the final rule revising part 2920 is published. The first question read as follows:

1. Under the existing regulations, all permits and leases are subject to a 30-day appeal period before they become effective. The 1990 proposed rule would make all leases and permits effective immediately upon issuance by the BLM authorized officer. Under the 1995 further proposed rule, only minimum impact permits would be effective immediately; leases and other permits would remain subject to the 30-day waiting period prescribed in 43 CFR part 4. Which approach do you think is appropriate?

The overwhelming public response to this question urged that all permits and leases be effective immediately. This final rule adopts this recommendation only as to the minimum impact permits provided for in section 2920.2-2 of the regulations in the 1995 and earlier editions of 43 CFR. General land use leases, and permits with more than minimal effects, will remain subject to 43 CFR 4.21.

In the further proposed rule, BLM also invited public comment on several other provisions that were not in the original proposed rule. The further proposed rule would have added rental and fee schedules for commercial filming and photography, and would have addressed hazardous materials, outdoor advertising, criminal penalties, and conforming applications to land use planning. The BLM will resolve these issues in its forthcoming final rule revising part 2920.

The BLM received approximately 800 comments on the further proposed rule from the filming and photography industries, State and local government agencies, individuals and environmental organizations. The great majority of the public comments opposed the further proposed rule as overly complex, specific, and burdensome.

II. Final Rule and Response to Comments

New section 2920.0-9

This section explains the information collection requirements contained in part 2920, and is added in the final rule to comply with the publication requirements of the Code of Federal Regulations. The material in this section appeared in the 1995 and earlier editions of 43 CFR as a ''Note'' at the beginning of Group 2900, and in the preamble to the original proposed rule published on November 21, 1990. This material must appear in the regulation text.

Amended section 2920.2-2 Minimum impact permits.

New paragraph 2920.2-2(b) is added to cover appeals of minimum impact permit decisions. Appeals were provided for in subpart 2924 in the 1990 proposed rule. In the further proposed rule, part 2920 was reorganized so that section 2921.8 pertained to appeals. Designation of the appeals section in the rule adopted today is dictated by the

organization of part 2920 as presently constituted. Existing section 2920.2 is an umbrella heading addressing public-initiated land use proposals. Existing section 2920.2-2 allows the issuance of minimum impact permits in appropriate circumstances. New paragraph 2920.2-2(b) covers appeals of decisions on these permits and makes it clear that its provisions pertain only to minimum impact permits issued under section 2920.2-2. This final rule does not affect appeals of penalties for unauthorized use and appeals of determinations that land use proposals do not conform to approved land use plans. New paragraph 2920.2-2(b) may be renumbered and amended when a comprehensive final rule revising part 2920 is published.

The final rule published today provides that all BLM permit decisions made under section 2920.2-2 will be effective immediately and remain in effect during the time allowed for filing an administrative appeal to the IBLA. Section 2920.2-2 applies only to land uses that have minimum impacts on the public lands and resources. To meet this standard, the use must be in conformance with BLM resource management plans or other plans for the particular lands affected, and with BLM policies and programs. The use must also conform with local zoning ordinances and all other legal requirements, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The permitted use must not cause appreciable damage or disturbance to public lands, their resources or improvements. The BLM will not grant a permit under section 2920.2-2 if the permit proposal fails to meet any one of these requirements.

Lease applications, and permit proposals that do not meet the minimum impact standards stated in section 2920.2-2, are not effective immediately upon issuance. For example, if BLM finds that the proposed use does not conform to resource management plans, or local zoning, BLM does not authorize the use until the procedures contained in the remainder of part 2920 have been followed and until the applicant meets its requirements.

Based on its recent experience in administering the film permit program, the BLM expects that the great majority of permits issued under part 2920 will meet the standards set forth in section 2920.2-2, and that problems arising during the consideration of these permits will be resolved by consultation among BLM, the applicant, and other interested persons. In some instances, a person may wish to appeal and seek a stay of BLM's decision to issue a permit under section 2920.2-2 until the appeal is resolved. When the appeal is filed, the procedures in 43 CFR 4.21(b) will be applicable. However, the permit issued will remain in effect until IBLA grants a stay.

Most respondents addressing the date a permit would become effective in the further proposed rule wanted all permits to be made effective immediately and to remain in effect while an administrative appeal is pending. Respondents emphasized the need to rely on the discretion of local BLM managers to gather data and make an informed decision, while complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), and other environmental laws. As stated earlier, BLM anticipates that, under the final rule, most permits will meet the requirements for minimum impact permits in section 2920.2-2(a), and will be issued in full force and effect under section 2920.2-2(b).

One respondent suggested that the rule should provide appellants the option of petitioning the State Director for a stay, before appealing to IBLA, to allow a more expeditious remedy. The BLM has not adopted this suggestion in the final rule because it would create an unnecessarily cumbersome and burdensome bureaucratic step in the permit appeal process.

Finally, an editorial amendment is made in section 2920.2-2 as it appeared in the 1995 and earlier editions of 43 CFR. This section is redesignated as paragraph (a) in the rule published today. Because ''permit'' is defined as an authorization in section 2920.0-5, the word ''authorization'' in the phrase ''permit for a land use authorization''

is redundant and has been removed in this final rule.

III. Procedural Matters

The principal author of this final rule is Jeff Holdren of the Use Authorization Team, BLM, Washington, DC.

The BLM has determined in an environmental analysis that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The rule merely simplifies and streamlines the permit process for uses found to have minimum environmental impact. Under this rule, all applications for permits or leases remain subject to environmental analysis, and if an environmental impact statement is necessary, minimum impact permits will not be issued.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The rule will have little effect on costs or prices for consumers, nor will there be a need for increasing Federal, State, or local agency budget or personnel requirements. By promulgating regulations that merely streamline the permit issuance process, the rule will result in little or no change in revenue for the United States, although improved efficiency should reduce administrative costs. Any revenue changes realized would not have a measurable impact on the economy and would not approach $100 million annually. The rule will have no other expected economic effects and contain no increased costs to the United States or users of the public lands.

For the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the rule will not have a significant economic impact on a substantial number of small entities. The rule favors no demographic group, and imposes no direct or indirect costs on small entities. It merely expedites the process of issuing permits.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, as stated above.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq..

List of Subjects in 43 CFR Part 2920

Public lands, Reporting and recordkeeping requirements.

Dated: June 5, 1996.
Sylvia V. Baca,
Acting Assistant Secretary of the Interior.

Under the authority of Sections 102, 302, 303, 304, and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1732, 1733, 1734 and 1740) part 2920, Group 2900, Subchapter B, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 2920--LEASES, PERMITS AND EASEMENTS

1. The Note at the beginning of Group 2900 is removed.
2. The authority citation for part 2920 is revised to read as

follows:

Authority: 43 U.S.C. 1740.

3. Section 2920.0-9 is added to read as follows:

Sec. 2920.0-9 Information collection.

(a) The information collection requirements contained in Part 2920 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq., and assigned clearance number 1004-0009. The BLM will use the information in considering land use proposals and applications. You must respond to obtain a benefit under Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732).

(b) Public reporting burden for this information is estimated to average 7.43 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Land Management (DW-101), Building 50, Denver Federal Center, P.O. Box 25047, Denver, Colorado 80225, and to the Office of Management and Budget, Paperwork Reduction Project, 1004-0009, Washington, D.C. 20503.

4. Section 2920.2-2 is amended by redesignating the existing text as paragraph (a), by removing the word ''authorization'' from paragraph (a), and by adding paragraph (b) to read as follows:

Sec. 2920.2-2 Minimum impact permits.

* * * * *

(b) Permit decisions made under paragraph (a) of this section take effect immediately upon execution, and remain in effect during the period of time specified in the decision to issue the permit. Any person whose interest is adversely affected by a decision to grant or deny a permit under paragraph (a) of this section may appeal to the Board of Land Appeals under part 4 of this title. However, decisions and permits issued under paragraph (a) of this section will remain in effect until stayed.

[FR Doc. 96-15994 Filed 6-21-96; 8:45 am]
BILLING CODE 4310-84-P